of the date of the publication of the Notice in the **Federal Register** on July 11, 1997. All comments and requests for hearing were due by August 25, 1997. Subsequently, on two occasions the applicant requested additional time within which to notify interested persons. Accordingly, the Department agreed to extend the comment period to October 29, 1997.

As of the close of the extended comment period, the Department had received no requests for hearing. However, the Department did receive a comment letter from the applicant, EBPLife, dated September 3, 1997, in which the applicant confirmed the July 1, 1997, sale by First Data Corporation of its administrative service affiliate, First Health, to an unrelated company. As a result of that sale, EBPLife no longer has current plan sponsor clients with respect to which it, or its Affiliates, provides both reinsurance and non-discretionary administrative services. Accordingly, the Department has determined to amend the effective date of the exemption to cover the period from April 15, 1994, the date the application was filed, to July 1, 1997, the date when the First Health was sold.

After full consideration and review of the entire record, including the written comment filed by the applicant, the Department has determined to grant the exemption, as modified and clarified above. The comment submitted by the applicant to the Department has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on July 11, 1997, 62 FR 37299.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Franklin & Davis, P.C. Profit Sharing Plan (the Plan), Located in Troy, Michigan

[Prohibited Transaction No. 97–62; Exemption Application No. D–10450]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to two loans (the Loans) totaling $229,000 to Franklin & Davis, P.C. (F&D), the Plan's sponsor and a disqualified person with respect to the Plan, by the individual account (the Account) of Bruce W. Franklin (Mr. Franklin), provided the following conditions are satisfied: (a) The terms of the Loans are at least as favorable to the Plan as those obtainable in arm's-length transactions with an unrelated party; (b) the Loans do not exceed 25% of the assets of the Account; (c) the first Loan (Loan 1) is secured by a second mortgage on certain real property which has been appraised by a qualified independent appraiser to have a fair market value not less than 150% of the amount of Loan 1 plus the balance of the first mortgage which it secures; (d) the second Loan (Loan 2) is secured by certain securities which have a fair market value not less than 200% of Loan 2; and (e) the fair market value of the collateral remains at least equal to the percentages described in conditions (c) and (d), above, throughout the duration of the Loans.[2]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 2, 1997 at 62 FR 51692.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

[2] Since Mr. Franklin is the sole owner of F&D and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 19th day of November, 1997.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97–30827 Filed 11–21–97; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10328, et al.]

Proposed Exemptions; MS Commodity Investments Portfolio II, L.P. (the Partnership, et al.)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. ________, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713,October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

MS Commodity Investments Portfolio II, L.P. (the Partnership) and Morgan Stanley Commodities Management, Inc. (MSCM, Collectively the Applicants), Located in New York, NY

[Application Nos. D–10328 and D–10329]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D), shall not apply, effective April 3, 1996, to the acquisition or redemption of units (the Units or Unit) in the Partnership by certain plans (the Plans or Plan) that invest in the Partnership, where MSCM, the general partner of the Partnership, and/or its affiliates are parties in interest and/or disqualified persons with respect to such Plans; provided that the conditions, as set forth below in Section II are satisfied as of the effective date of this exemption.[1]

Section II. General Conditions

This proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the applications are true and complete, and that the applications accurately describe all material terms of the transactions to be consummated pursuant to the exemption.

(a) Prior to the investment of the assets of a Plan in the Partnership, a fiduciary of such Plan (the Plan Fiduciary or Plan Fiduciaries) who is/are independent of MSCM and its affiliates must approve such investment.

(b) MSCM has determined and documented and will determine and document, pursuant to a written procedure, that the decision of a Plan to invest in the Partnership was and will be made by a Plan Fiduciary who was and is independent of MSCM and its affiliates and who was and is capable of making an informed investment decision about investing in the Partnership.

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(c) The independent Plan Fiduciary of each Plan investing in the Partnership has retained and will retain complete discretion with respect to transactions initiated by such Plan involving the acquisition or redemption of Units in the Partnership.

(d) Neither MSCM nor its affiliates has any discretionary authority or control with respect to the investment of assets by Plans in the Partnership nor renders investment advice (within the meaning of 29 CFR 2510.3–21(c) with respect to the investment of such assets.

(e) No Plan investing in the Partnership has acquired and held or will acquire or hold Units in the Partnership that represent more than 20 percent (20%) of the assets of the Partnership.

(f) At the time of any acquisition of Units by a Plan, the aggregate value of the Units acquired and held by such Plan does not exceed 10 percent (10%) of the assets of such Plan.

(g) At the time transactions are entered into, the terms of such transactions are at least as favorable to the Plans as those obtainable in arm's length transactions with an unrelated party.

(h) No Plan has paid or will pay a fee or commission to MSCM or any of its affiliates by reason of the acquisition or redemption of Units in the Partnership.

(i) The total fees paid to MSCM have constituted and will constitute no more than reasonable compensation, within the meaning of sections 408(b)(2) and 408(c)(2) of the Act.

(j) Only Plans with assets having an aggregate market value of at least $25 million have been and will be permitted to invest in the Partnership, except that in the case of two or more Plans maintained by a single employer or controlled group of employers, the $25 million dollar requirement may be met by aggregating the assets of such Plans, if the assets are commingled for investment purposes in a single master trust.

(k) Prior to making an investment in the Partnership, the independent Plan Fiduciary of each potential Plan investor, and/or such Plan investor's authorized representative has been and will be provided by MSCM or by an affiliate with a written copy of the following offering materials:

(1) the Private Placement Memorandum of the Partnership (the Memorandum) (which contains among other things, a description of the offering of Units, all material facts concerning the purpose, structure, and operation of the Partnership, as well as any associated risk factors, and a description of the relationships existing

between MSCM, Morgan Stanley Asset Management Inc. (MSAM), Morgan Stanley & Co. Incorporated (MS&Co), and Morgan Stanley Group Inc. (the MS Group));

(2) the then-current limited partnership agreement (the LP Agreement) between MSCM and the investors in the Partnership; and

(3) the then-current subscription agreement (the Subscription Agreement) (an executed copy of which is delivered to a subscriber and/or its authorized representative as soon as practicable following such subscriber's investment in the Partnership) and the Investor Certification previously furnished by MSCM or its affiliates to the independent Plan Fiduciaries for completion which contains information about each potential Plan investor, specifies such Plan's proposed investment in the Partnership, and documents the fact that the investment decision is being made by an independent Plan Fiduciary who is capable of making an informed investment decision about investing in the Partnership.

(l) With respect to the ongoing participation in the Partnership, the independent Plan Fiduciary of each Plan invested in the Partnership has received and will receive, within the time periods specified below, the following additional written disclosures from MSCM or from its affiliates:

(1) within ninety (90) days after the close of each fiscal year, audited financial statements of the Partnership, prepared annually by a qualified, independent, public accountant including:

(i) a balance sheet; (ii) a statement of income or a statement of loss; (iii) the net asset value of the Partnership, as of the end of the two preceding fiscal years; (iv) either: (A) the net asset value per outstanding Unit as of the end of the reporting period or (B) the total value of each participant's interest in the Partnership as of the end of such period; (v) a statement of changes in partner's capital; and (vi) the amount of the total fees paid to MSCM or to its affiliates by the Partnership during such period.

(2) within thirty (30) days after the end of each calendar month, a monthly statement of account prepared by MSCM or by its affiliates containing the following unaudited financial information:

(i) the total amount of realized net gain or loss on commodity interest positions liquidated during the reporting period; (ii) the change in unrealized net gain or loss on commodity interest positions during such reporting period; (iii) the total amount of net gain or loss from all other transactions in which the Partnership engaged during such reporting period; (iv) the total amount of management fees, advisory fees, brokerage commissions, and other fees for commodity interests and other investment transactions incurred or accrued by the Partnership during such reporting period; (v) the net assets value of the Partnership as of the beginning of such reporting period; (vi) the total amount of additions to Partnership capital made during such reporting period; (vii) the total amount of withdrawals from and redemption of Units in the Partnership during such reporting period; (viii) the total net income or loss of the Partnership during such reporting period; (ix) the net assets value of the Partnership as of the end of such reporting period; and (x) either (A) the net asset value per outstanding Unit as of the end of such reporting period or (B) the total value of each participant's interest in the Partnership as of the end of such reporting period.

(m) The Partnership has not engaged and will not engage in swaps transactions, as defined in Section III(d) below.

(n) The Partnership has not invested in and will not invest in any entity in which MS Group or any of its affiliates has an ownership interest.

(o) Affiliates of MSCM have not invested in and will not invest in the Partnership.

(p) The non-U.S. commodity trading activities of the Partnership has been and will be limited to the London Metals Exchange (the LME).

(q) The Applicants have not accepted and will not accept subscriptions from Plans which permit participants to exercise control over the decision to acquire or redeem Units;

(r) MSCM has maintained and shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (s) of this Section II to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of MSCM and/or its affiliates, the records are lost or destroyed prior to the end of the six (6) year period, and (b) no party in interest or disqualified person other than MSCM shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records have not been maintained or are not maintained, or have not been available or are not available for examination as required by paragraph (s) of this Section II below.

(s)(1) Except as provided in subsection (2) of this paragraph (s) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (r) of this Section II shall be unconditionally available at their customary location during normal business hours by:

(a) any duly authorized employee or representative of the Department or the Internal Revenue Service;

(b) any fiduciary of any Plan investing as a limited partner in the Partnership or any duly authorized representative of such fiduciary;

(c) any contributing employer to any Plan investing as a limited partner or any duly authorized employee representative of such employer;

(d) any participant or beneficiary of any participating Plan investing as a limited partner, or any duly authorized representative of such participant or beneficiary; and

(e) any other limited partner.

(2) None of the persons described above in subparagraphs (b)–(e) of paragraph (s)(1) of this Section II shall be authorized to examine the trade secrets of MSCM or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption:

(a) An *affiliate* of a person includes—

(1) any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control of such person. (For purposes of this subsection, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) any officer, director, or partner in such person, and

(3) any corporation or partnership of which such person is an officer, director, or a 5 percent (5%) or more partner or owner.

(b) A *Plan* or the *Plans* has not included and will not include any individual account plan(s) where participants have the right to exercise control over the decision to acquire or redeem Units.

(c) A *Plan Fiduciary* or *Plan Fiduciaries* is defined as a fiduciary or fiduciaries of a Plan who is/are independent of MSCM and its affiliates.

(d) A *swap transaction* is defined as an individually negotiated, non-standardized agreement between two parties to exchange cash flows at specified intervals known as payment or settlement dates. The cash flows of a swap are either fixed, or calculated for each settlement date by multiplying the quantity of the underlying asset (notional principal amount) by specified reference rates or prices. Depending upon the type of underlying asset, the great majority of these transactions are classified into interest rate, currency, commodity, or equity swaps. Interim payments are generally netted, with the difference being paid by one party to the other.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective retroactively, as of April 3, 1996, the date the Partnership was organized.

Summary of Facts and Representations

1. The MS Group is a publicly-traded company whose shares are listed on the New York Stock Exchange. The MS Group is a worldwide financial services firm employing more than 9,000 people which provides, directly or through its subsidiaries, services to a large and diversified group of clients and customers, including corporations, governments, and individual investors.

One subsidiary of the MS Group is MS&Co, a Delaware corporation with business offices in New York, New York. MS&Co is a registered futures commission merchant, a member of the National Futures Associations (NFA), a registered broker-dealer, a member of the National Association of Securities Dealers, and a member of most major United States and foreign commodity exchanges.

MSCM, a Delaware corporation, is a wholly-owned subsidiary of the MS Group. Since June 4, 1992, MSCM has been a registered commodity pool operator and commodity trading advisor and, as of the same date, has been a member of the NFA in such capacities. Currently, MSCM serves as the trading advisor for several U.S. and offshore funds. As of January 31, 1997, MSCM had $10 million in total assets and $8.5 million in total shareholder's equity. As of January 31, 1997, MSCM had total assets under management of approximately $130,740,000.

Another wholly-owned subsidiary of the MS Group, MSAM, a Delaware corporation, is registered with the Securities and Exchange Commission as an investment adviser, is registered with the Commodity Futures Trading Commission as a commodity trading advisor, and is a member of the NFA in such capacity. MSAM also meets the definition of a ''qualified professional asset manager'' as contained in Part V of the Department's Prohibited Transaction Class Exemption 84–14.[2]

2. The Partnership is a Delaware limited partnership with offices in New York, New York. The aggregate fair market value of the total assets of the Partnership, as of August 15, 1996, was approximately $15 million. The Partnership was organized on April 3, 1996, in order to trade, buy, sell, or otherwise acquire, hold, or dispose of commodity futures contracts (the Commodity Interests) on U.S. commodity exchanges and on non-U.S. commodity exchanges. It is represented that the Partnership may engage in the business of trading commodity interests directly or through partnerships, joint ventures, or similar arrangements.

It is represented that the trading strategy of the Partnership has been and will be applied to a broad range of commodities, including commodity interests on metals, energy products, grains, livestock, and other commodities selected by MSCM from time to time. It is represented that the assets of the Partnership has consisted and will consist solely of cash, Treasury securities, and positions with respect to exchange-traded futures contracts. Further, the Applicants have agreed as a condition of this exemption that the Partnership will not engage in swaps transactions, as defined in Section III(d) above.

The Applicants represent that the Partnership has invested and will invest solely in assets for which independent, objective pricing information is readily available. In this regard, the Applicants state that the Partnership's open futures positions are valued by reference to the closing price for each futures contract on the applicable commodity exchange. It is represented that the current value of any Treasury securities has been and will be determined by reference to prices established in over-the-counter transactions by persons unaffiliated with MSCM.

It is further represented that the trading strategy of the Partnership has been and will be limited in the following manner: (a) The Partnership has maintained and will maintain only long positions in Commodity Interests; (b) The Partnership has traded and will trade only futures contracts that are or may be traded on U.S. commodity exchanges or the LME; (c) the Partnership has not traded and will not trade interests on financial instruments (including stock indices) and foreign currencies; (d) the underlying value of the positions entered into in the commodity interest markets has been and will be targeted at 1.0 times the assets of the Partnership; (e) at the time of the initial closing and thereafter upon every portfolio reweighting: a minimum of 10 percent (10%) of the Partnership's assets has been and will be exposed to commodity sectors in energy, precious metals, and base metals; a maximum of 25 percent (25%) of the Partnership's assets have been and will be exposed to any one sector; and a maximum of 15 percent (15%) of the Partnership's assets have been and will be exposed to one particular commodity.

The Applicants have agreed that as a condition of this exemption, any non-U.S. commodity trading activities of the Partnership will be limited to the LME, which is subject to substantial regulation by the Securities and Futures Authority and the Securities Investment Board in the United Kingdom.

3. MSCM, as the sole discretionary general partner of the Partnership, controls, conducts, and manages the business of the Partnership, including executing various documents on behalf of the Partnership, determining the distributions, if any, of profits and income, and supervising the liquidation of the Partnership. It is represented that the affairs of the Partnership will be wound up and the Partnership liquidated as soon as practicable upon the first to occur of: (a) December 31, 2026, or (b) certain other terminating events, as set forth in the LP Agreement.

In addition, MSCM has retained MSAM, an affiliate of MSCM, as the trading advisor for the Partnership and cash management advisor with overall responsibility for the investment of the assets of the Partnership and for the Partnership's trading. MSAM has selected MSCM to make trading decisions on behalf of the Partnership of Commodity Interests on all U.S. exchanges and on the LME. It is represented that notwithstanding any such delegation, MSAM remains liable to the Partnership for the trading of Commodity Interests on behalf of the Partnership, to the same extent as if MSAM alone were making the actual trading decision regarding such Commodity Interests.

With respect to the trading of Commodity Interests by the Partnership, MSCM has retained: (1) MS&Co to act as the futures commission merchant with respect to trading by the Partnership on U.S. exchanges; and (2) Morgan Stanley International Limited to act as the futures commission merchant with respect to trading by the Partnership on the LME. In this regard, the Applicants

[2] The final exemption for PTCE 84–14 was published in the **Federal Register** on March 13, 1984, (49 FR 9494), and the proposed exemption was published in the **Federal Register** on December 21, 1982, (47 FR 56945).

have represented that, in connection with the Partnership's commodity trading activities, any transaction on the LME with respect to which it eventuates that an affiliate of MSCM is the formal counterparty, will be a ''blind transaction'' (*i.e.*, one in which the identity of the counterparty is not within the knowledge or control of MSCM or any affiliate thereof). The Applicants represent that, in connection with any commodity trading on the LME, the Partnership and any affiliates of MSCM will retain independent floor brokers. Although it is possible that the Partnership and an affiliate of MSCM will use the same floor broker, the Applicants represent that MSCM will instruct any floor broker retained on behalf of the Partnership not to cross trades with an affiliate of MSCM.

4. The Partnership pays monthly to MSCM an administrative fee (the Administrative Fee) computed daily and equal to a percentage of the net assets of the Partnership, as of the beginning of each day (before deduction of an incentive fee (the Incentive Fee) described below). It is represented that MSCM, as general partner, is responsible for paying all of the ordinary administrative expenses, brokerage commissions, any per transaction service charges, and any other similar fees with respect to trading by the Partnership. To the extent any expenses exceed the amount of the Administrative Fee paid to MSCM, the Partnership is not responsible for the payment of any such additional expenses. However, it is represented that MSCM received from the Partnership reimbursement for organizational expenses and initial offering costs.

Further, the Partnership pays monthly to MSAM for services, as described above, a management fee (the Management Fee) computed daily and equal to a percentage of the net assets of the Partnership as of the beginning of each day, before deduction of the Incentive Fee, as more fully described in the paragraph below. In consideration for making trading decisions with respect to the Partnership with regard to its commodity interest trading, MSAM pays to MSCM 80 percent (80%) of such Management Fee and 100 percent (100%) of the Incentive Fee.

With respect to the Incentive Fee, it is represented that the Partnership pays to MSAM at the end of each annual incentive period an Incentive Fee equal to a percentage of the amount that the Partnership's net performance exceeds a target return. Net performance equals the realized and unrealized trading profits and losses of the Partnership plus interest income credited to the Partnership, less the Management Fee, the Administrative Fee, and other fees and costs of the Partnership (but not including the Incentive Fee, initial offering costs, and extraordinary expenses). Net Performance is measured over a period of not less than one (1) year. The target return against which this performance is compared is a predetermined objective index. It is represented that the calculation of the Incentive Fee complies with the terms and conditions of SEC Rule 205–3 and is reviewed by an independent accounting firm as part of an annual audit of the Partnership's financial statements.[3]

5. It is represented that Units in the Partnership have been and will be offered to investors under exemptions from registration, pursuant to section 4(2) of the Securities Act of 1933 (the 1933 Act) and Rule 506 of Regulation D promulgated thereunder.[4] It is represented that, as the Partnership is not a private investment company, it is not required to limit the number of its investors to 100.

The Memorandum provided for an initial offering of Units in the Partnership for sale through MS&Co for a period of thirty (30) days from the date of the Memorandum (*i.e.*, May 23, 1996), subject to the discretion of MSCM to shorten or extend such period. No minimum amount of sales of Units was necessary in order for the initial offering to close. In this regard, it is represented that the date of the initial closing was July 1, 1996.

Following the initial closing, Units in the Partnership have been and will be continually offered on a daily basis through MS&Co to new investors who are qualified and to existing limited partners of the Partnership in a private offering (the Continuous Offering). In this regard, the Partnership may continue indefinitely to sell Units, subject to the discretion of MSCM which may at any time or from time to time terminate and recommence the offering. The Applicants have agreed, as a condition of this exemption, that affiliates of MSCM will not be permitted to invest in the Partnership.

After the initial offering, the minimum investment in the Partnership per subscriber is $5,000,000, with a $50,000 minimum for additional investments by existing limited partners in the Partnership, subject to exceptions at the discretion of MSCM. There is no limit on the total capitalization of the Partnership. It is represented that as of April 2, 1997, the capital of the Partnership totaled $25,400,000.

During the Continuous Offering, Units have been and will be issued as of the close of business each business day at a price per Unit equal to the net asset value per Unit, as of the date of issuance. The net asset value of a Unit is defined as net assets allocated to capital accounts divided by the aggregate number of Units. It is represented that the net assets of the Partnership are determined in accordance with generally accepted accounting principles consistently applied under the accrual basis of accounting. It is represented that the market values of the Commodity Interests of the Partnership are determined by MSCM in good faith on a basis consistently applied in accordance with generally accepted accounting principles.

6. The Applicants maintain that the assets of the Partnership may be deemed to be plan assets pursuant to 29 CFR 2510.3–101 of regulations issued by the Department (the Plan Asset Regulations). Under the Plan Asset Regulations, when a plan acquires an equity interest in an entity, such as the Partnership, which interest is not a publicly offered security (as in the case of the Units), nor a security issued by an investment company registered under the Investment Company Act of 1940, the underlying assets of the entity will be deemed to include plan assets, if 25 percent (25%) of the outstanding interests of such entity are held by ''benefit plan investors,'' as defined in the Plan Asset Regulations. It is anticipated that prior to the grant of this proposed exemption the equity participation by Plans in the Partnership may exceed 25 percent (25%) of the total value of all of the Partnership Units. If and when such event occurs, the underlying assets of the Partnership will constitute ''plan assets'' within the meaning of 29 CFR 2510.3–101. Accordingly, the Applicants have requested that the exemption be effective, as of April 3, 1996, the date on which the Partnership was organized.

[3] The Applicants maintain that the Incentive Fee structure, described herein, is comparable in several respects to the performance fee arrangements previously reviewed by the Department of Labor in certain advisory opinion letters, 86–20A. 86–21A, and 89–31A. In this regard, the Applicants have not requested relief for the receipt of the Incentive Fee by MSAM and/or by its affiliates. The Department, herein, offers no opinion as to whether the Incentive Fee structure violates any provision of the prohibited transaction provisions of section 406 of the Act, nor is the Department providing relief, herein, for the receipt by MSCM or by its affiliates of any Incentive Fee.

[4] Rule 506 provides a special exemption for limited offers and sales of securities by an issuer without regard to the dollar amount of the offering. In particular, Rule 506(b)(2)(i) limits to 35 the number of non-accredited investors in an offering.

7. Once the assets of the Partnership are deemed to be assets of the Plans which invest in the Partnership, by virtue of its discretionary authority and control over such assets as general partner, MSCM becomes a fiduciary within the meaning of section 3(21) of the Act, and a party in interest, pursuant to section 3(14)(A) of the Act, with respect to any Plan which invests in the Partnership.

Further, the MS Group anticipates that Plans for which the MS Group or its affiliates perform services will invest in the Partnership. In this regard, as set forth in the most recent Memorandum, it is represented that the MS Group or its affiliates provide: (a) Brokerage services to plans; (b) asset management and/or investment advisory services to plans; and (c) services to plans as custodian, clearing agent, and/or trustee. Accordingly, MSCM may also be a party in interest with respect to Plans which invest in the Partnership by virtue of the affiliation of MSCM with other entities that are fiduciaries of Plans or that provide services to such Plans. It is further represented that other partners of the Partnership, as yet unidentified, may also be parties in interest with respect to Plans which invest in the Partnership.

8. The Applicants seek a retroactive exemption for the acquisition of Units in the Partnership by Plans from MSCM, the general partner of the Partnership, and other potential parties in interest with respect to such Plans, which may constitute prohibited transactions between such Plans and such parties in interest under section 406(a) of the Act. In this regard, the acquisition of Units by the Plans may be characterized as an indirect sale by each existing partner of the Partnership of a portion of its Partnership interest to such investing Plan (and a corresponding transfer of Plan assets) in violation of section 406(a)(1)(A) and/or 406(a)(1)(D) of the Act. Likewise, the redemption of Units by a Plan may be characterized as an indirect sale of a portion of such Plan's redeemed interest in the Partnership to each remaining partner (and a corresponding transfer of Plan assets) in violation of section 406(a)(1)(A) and/or 406(a)(1)(D) of the Act, if a party in interest to the Plan is involved. Accordingly, the Applicants request an administrative exemption from the Department with respect to the acquisition and redemption of Units in the Partnership by Plan investors.

As discussed above, the Applicants have represented that MSCM and its affiliates provide various investment-related services to Plans that may invest in the Partnership and also provide comparable services to the Partnership. In this regard, the Applicants are of the opinion that in the ordinary course of trading of commodities futures, any prohibited transactions that may arise, other than those for which relief is proposed herein, would result from the Partnership engaging in trading through a futures commission merchant that is a party in interest with respect to a Plan invested in the Partnership. To the extent that the provision of services by MSCM and its affiliates to the Partnership constitutes an indirect furnishing of services to Plans invested in the Partnership which is prohibited under section 406(a) of the Act, the Applicants intend to rely on the statutory exemption provided by section 408(b)(2) of the Act.[5] Furthermore, the Applicants represent that any brokerage fees paid to affiliates of MSCM have not and will not be expenses of the Partnership but have been and will be paid by MSCM. Finally, with respect to the selection of MSCM or an affiliate to provide services to the Partnership for a fee, the Applicants represent that neither MSCM nor any of its affiliates have investment discretion or render investment advice with respect to any assets of the plans used to purchase Units in the Partnership. As a result, it is the Applicant's opinion that the furnishing of these services have not and will not constitute an act of self-dealing prohibited by section 406(b) of the Act.[6]

9. At the time the application for exemption was submitted to the Department, it was represented that the Plans that have been or may be affected by the grant of this proposed exemption could not be determined. Upon submission of the application, MSCM represented that it did not anticipate investment in the Partnership by individual retirement accounts, by Keogh plans, and or by employee benefit plans which provide for participant-directed investments. However, the application did not preclude such investment to the extent that such plans could satisfy the investor certification requirements and other conditions, as set forth in the Subscription Agreement. The Applicants anticipate that sponsors or fiduciaries of plans providing for participant-directed investment may wish to include Units in a diversified portfolio that is one of several designated investment alternatives. However, as a condition of the exemption, the Applicants have agreed not to accept subscriptions by Plans which permit participants to exercise control over the decision to acquire or redeem Units.

10. Only Plans with assets having an aggregate market value of at least $25 million will be permitted to invest in the Partnership, except that in the case of two or more Plans maintained by a single employer or controlled group of employers, the $25 million dollar requirement may be met by aggregating the assets of such Plans, if the assets are commingled for investment purposes in a single master trust. In addition, prior to accepting a subscription from a prospective Plan investor, the Plan Fiduciaries who are independent of the Applicants and their affiliates complete certain investor certification representations in the Subscription Agreement. In this regard, each Plan and/or its authorized representative is required to represent that such Plan is an ''accredited investor,'' within the meaning of Rule 501(a) of Regulation D promulgated under the 1933 Act, and a ''qualified eligible participant,'' as defined in Rule 4.7 under the Commodities Exchange Act, as amended. Each Plan and/or its authorized representative is also required to represent that such Plan, together with any advisers retained by it, has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of investing in the Partnership.[7] Furthermore, each

[5] Section 406(b)(2) of the permits any reasonable arrangement with a party in interest, for services necessary for the establishment or operation of a plan, provided that no more than reasonable compensation is received therefor. The Department express no opinion, herein, as to whether the provision of services to the Partnership by MSCM and/or its affiliates and the compensation received therefor satisfy the terms and conditions of section 408(b)(2) of the Act.

[6] The Applicants believe that the analysis contained in Advisory Opinion 82–26A (June 9, 1982) is applicable to the provision of multiple services by MSCM and/or its affiliates. This opinion involved the provision of multiple services where a fiduciary did not use the authority, control, or responsibility which made it a fiduciary to cause the plan to select such fiduciary or to pay any fee for the provision of services by such fiduciary. In addition, the Applicants rely on Advisory Opinion 82–62A (December 8, 1982) which involved a fiduciary's decision to retain an affiliate to provide services to a plan, where the fee for such services was paid by the plan sponsor not by the plan and where the fiduciary of the plan was not in a position to benefit, or to cause a person to whom the fiduciary had an interest to benefit from such decision at the expense of such plan. Thus, the Department is not offering relief, herein, for the provision of multiple services by MSCM and/or its affiliates.

[7] The Department wishes to note that ERISA's general standards of fiduciary conduct would apply to the investment described in this proposed exemption, and that satisfaction of the conditions of this proposal should not be viewed as an endorsement of the investment by the Department. Section 404 of ERISA requires, among other things,

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subscriber that is purchasing Units with the assets of a Plan is required to represent: (a) That it has evaluated for itself the merits of the investment; (b) that it has not solicited and has not received from the Partnership, from MSCM, or from any affiliate thereof any evaluation or investment advice in respect of the advisability of such an investment in light of the Plan's assets, cash needs, investment policies or strategy, overall portfolio, or diversification of assets; (c) that it is not relying on and has not relied on MSCM, or on any affiliate thereof, for any such investment advice; and (d) that neither MSCM nor its affiliates has investment discretion with respect to the assets of the Plan which have been or will be used to acquire or redeem Units.[8]

11. Prior to investing in the Partnership, each potential investor and/or its authorized representative (including a Plan and/or a Plan Fiduciary) has been and will be provided with a copy of: (a) The Memorandum (which contains, among other things, a description of the offering and the relationships existing between MSCM, MSAM, MS&Co, and the MS Group; (b) the then-current LP Agreement; (c) the then-current Subscription Agreement (an executed copy of which is also delivered to a subscriber and or its authorized representative, including a Plan and/or a Plan Fiduciary, as soon as practicable following investment in the Partnership by such subscriber). Further, the Applicants represent that a copy of this notice of proposed exemption (the Notice) and a copy of the final exemption (the Final Exemption), if granted, will be provided to all Plans that invest in the Partnership subsequent to the publication of the Final Exemption in the **Federal Register**.

12. It is represented that MSCM has distributed and will distribute to each Plan that invests in the Partnership as a limited partner (a) within ninety (90) days after the close of each fiscal year of the Partnership, audited financial statements (including a balance sheet; a statement of income or a statement of loss; the net asset value of the Partnership, as of the end of the two preceding fiscal years; either (A) the net asset value per outstanding Unit as of the end of the reporting period or (B) the total value of each participant's interest in the Partnership as of the end of such period; a statement of changes in partner's capital; and the amount of the total fees paid to MSCM or to its affiliates by the Partnership during such period.

It is also represented that MSCM has distributed and will distribute to each Plan that invests in the Partnership as a limited partner within thirty (30) days after the end of each calender month, a report for such month specifying, among other things: (i) The total amount of realized net gain or loss on commodity interest positions liquidated during the reporting period; (ii) the change in unrealized net gain or loss on commodity interest positions during such reporting period; (iii) the total amount of net gain or loss from all other transactions in which the Partnership engaged during such reporting period; (iv) the total amount of management fees, advisory fees, brokerage commissions, and other fees for commodity interests and other investment transactions incurred or accrued by the Partnership during such reporting period; (v) the net assets value of the Partnership as of the beginning of such reporting period; (vi) the total amount of additions to Partnership capital made during such reporting period; (vii) the total amount of withdrawals from and redemption of Units in the Partnership during such reporting period; (viii) the total net income or loss of the Partnership during such reporting period; (ix) the net assets value of the Partnership as of the end of such reporting period; and (x) either (A) the net asset value per outstanding Unit as of the end of such reporting period or (B) the total value of each participant's interest in the Partnership as of the end of such reporting period.

13. It is represented that a capital account is established for each partner in the Partnership, including the Plans. However, in this regard, it is represented that investors in the Partnership may not allocate invested funds to any specific investment. Instead, the funds raised through the offering of Units have been and will be deposited in an account maintained by the Partnership with MS&Co or to the extent the Partnership trades on the LME, deposited in certain accounts maintained with non-U.S. banks and foreign brokers.

14. Under current federal and state income tax laws, MSCM (in its capacity as general partner of the Partnership) may be required to maintain contributions to the capital of the Partnership in cash for all fiscal years in amounts which equal at least one percent (1%) of the aggregate capital contributions to the Partnership by all partners for all fiscal years (including contributions by MSCM). On July 1, 1996, the date of the closing of the initial offering of Units in the Partnership, MSCM had contributed $120,694 to the Partnership. As of January 31, 1997, the aggregate contributions by MSCM to the Partnership totaled $172,000. The Applicants represent that, MSCM will not maintain an interest in the Partnership that exceeds one percent (1%) of the aggregate capital contributions to the Partnership by all partners. In the event that MSCM's interest in the Partnership exceeds this amount by more than a *de minimis* amount, MSCM shall, within five (5) business days, reduce its interest to the permitted level by accepting additional subscriptions, if possible, or by withdrawing any portion of its interest in the Partnership that is in excess of one percent (1%) of the Partnership's capital, as permitted under the LP Agreement.

15. It is represented that a limited partner in the Partnership, including a Plan, may sell or transfer Units or any interest therein in the Partnership only with the consent of MSCM. Such

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that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, the plan fiduciary must act prudently with respect to the decision to enter into an investment transaction. The Department further emphasizes that it expects the plan fiduciary to fully understand the benefits and risks associated with engaging in a specific type of investment, following disclosure to such fiduciary of all relevant information. In addition, such plan fiduciary must be capable of periodically monitoring the investment, including any changes in the value of the investment. Thus, in considering whether to enter into a transaction, a fiduciary should take into account its ability to provide adequate oversight of the particular investment.

[8] The Department is not expressing an opinion on whether the Applicants or their affiliates would be deemed to be fiduciaries under section 3(21)(A)(ii) of the Act. In this regard, the Department believes, as a general matter, that when a person is deemed a fiduciary by virtue of rendering investment advice described in regulation section 2510.3–21(c)(1)(ii)(B), the presence of an unrelated second fiduciary acting on the investment adviser's recommendations on behalf of the Plan is not sufficient to insulate the investment adviser from fiduciary liability under section 406(b) of the Act. The Department's regulation section 2510.3–21(c)(1)(ii)(B) presupposes the existence of a second fiduciary who by agreement or conduct manifests a mutual understanding to rely on the investment adviser's recommendations as a primary basis for the investment of Plan assets. In the presence of such an agreement or understanding, the rendering of investment advice involving self-dealing such as the acquisition of Units in the Partnership which results in the payment of fees to the adviser, will subject the investment adviser to liability under section 406(b) of the Act. The Department is unable to conclude that fiduciary self-dealing of this type (if present) is in the interests or protective of the Plans and their participants and beneficiaries. If, however, the unrelated second fiduciary has not agreed to rely on the investment adviser's recommendations, the investment adviser will not be deemed to be a fiduciary under section 3(21)(A)(ii) because the requirements of regulation section 2510.3–(21)(c)(1)(ii)(B) will not be met. Accordingly, the Department has limited exemptive relief for the acquisition or redemption of Partnership Units to section 406(a) violations only.

consent may be withheld in the sole discretion of MSCM as general partner of the Partnership.

A limited partner, including a Plan, may withdraw all or part of its capital contributions and undistributed profits, if any, by requiring the Partnership to redeem all or part of its Units, effective as of the close of each business day. Redemptions may only be made in amounts greater than or equal to $20,000, unless the limited partner, including a Plan, is redeeming all of its interest in the Partnership. A limited partner may not make a partial redemption of Units that would reduce the net asset value of such limited partner's unredeemed Units, as of the effective date of the redemption, to less than $5,000,000 or the amount of such limited partner's initial investment, whichever is *less*. Requests for redemption must be made by letter in a form acceptable to MSCM and must be received by MSCM at its offices at least two full business days prior to the effective date of the redemption.

In addition, MSCM may, in its sole discretion as general partner, require any limited partner, including a Plan, to redeem all of its Units or a portion of such Units upon written notice to such limited partner. No fee or other charge is payable by a limited partner, including a Plan, upon redemption of its Units. It is represented that any distributions to a limited partner from the Partnership in redemption of Units have been and will be made in cash.

16. It is represented that the requested exemption is protective of the rights of the participants and beneficiaries of affected Plans in that the decision to invest in the Partnership has been and will be made by a Plan Fiduciary who is independent of MSCM and its affiliates. In this regard, such Plan Fiduciaries retain complete discretion with respect to transactions initiated by a Plan investor involving the acquisition or redemption of Units. In addition, investors in the Partnership are furnished with audited financial statements and periodic reports that enable the Plan Fiduciaries to monitor the investment activities of the Partnership and permit such parties to discharge their oversight responsibilities.

Further protections are afforded by appropriate limitations which are placed on Plan investment in the Partnership. In this regard, no single Plan investor is permitted under any circumstances to acquire or hold an amount of Units which causes the investment by such Plan to exceed 20 percent (20%) of the total assets of the Partnership. In addition, at the time of any acquisition of Units by a Plan, the aggregate value of the Units acquired and held by such Plan has not and will not exceed 10 percent (10%) of the total assets of such Plan.

17. The Applicants maintain that the terms and conditions of this proposed exemption provide additional safeguards for the protection of Plans which invest in the Partnership. In this regard, as a condition of this exemption, MS&Co and its affiliates have agreed that the Partnership has not invested and will not invest in any entity in which MS&Co or any of its affiliates has an ownership interest. In addition, the Partnership has not engaged and will not engage in swaps transactions, as defined in Section III (d) above, nor does the Partnership anticipate making any investment in U.S. or off-shore funds. Furthermore, it is represented that the Partnership does not anticipate making any equity investments in entities for which a party in interest with respect to any Plan invested in the Partnership has an ownership interest.

18. The Applicants represent that the requested exemption would be administrative feasible, because the transactions involved have been and will be well-documented through professionally maintained books and records which are subject to government review and independent, certified audits. As such, it is represented that the transactions can be readily monitored to ensure compliance with the terms of the exemption. In addition, the Applicants have borne and will bear all of the costs of the exemption applications and will be responsible for the costs of notifying interested persons.

19. It is represented that the requested exemption is in the interest of the affected Plans (and their participants and beneficiaries) in that the Partnership provides Plans with the type of investment medium and risk factors that such Plans desire in their investment portfolios.

Moreover the transactions are in the interest of the Plans which invest in the Partnership, because no placement fee or other sales charge has been or will be payable by the Partnership or by investors in connection with the offering of the Units. In addition, Plans have been and will be permitted to redeem their investments in the Partnership upon reasonably short notice, without the payment of fees or penalties of any sort. In this regard, it is represented that MSCM, MSAM, MS&Co, the MS Group or their affiliates do not receive any fees in connection with the acquisition or redemption of Units by Plan investors.

20. In summary, it is represented that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The participation by Plans in the Partnership has been and will be approved by Plan Fiduciaries prior investment by Plans in the Partnership;

(b) The Applicants have instituted and maintained and will institute and maintain a written procedure and records establishing criteria for determining that the Plan Fiduciaries are independent of the Applicants and their affiliates and are sufficiently knowledgeable to make an informed decision regarding the investment by Plans in the Partnership;

(c) A Plan Fiduciary maintains complete discretion with respect to acquiring or redeeming Units in the Partnership on behalf of a Plan;

(d) Neither MSCM nor its affiliates has any discretionary authority or control with respect to the investment of assets of the Plans in Units of the Partnership nor renders investment advice with respect to the investment of those assets;

(e) No Plan has acquired and held or will acquire or hold Units in the Partnership that represents more than 20 percent (20%) of the assets of the Partnership;

(f) At the time of any acquisition of Units by a Plan, the aggregate value of the Units acquired or held by such Plan has not and will not exceed 10 percent (10%) of the assets of such Plan;

(g) The terms of each acquisition or redemption of Partnership Units has been and will be at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party;

(h) No Plan has paid or will pay a fee or commission by reason of the acquisition or redemption of Partnership Units;

(i) The total fees paid to MSCM or their affiliates with respect to services rendered have constituted and will constitute no more than reasonable compensation, within the meaning of sections 408(b)(2) and 408(c)(2) of the Act;

(j) Only Plans with assets having an aggregate market value of at least $25 million have been and will be permitted to invest in the Partnership, except that in the case of two or more Plans maintained by a single employer or controlled group of employers, the $25 million dollar requirement may be met by aggregating the assets of such Plans, if the assets are commingled for investment purposes in a single master trust.

(k) The Applicants have made and will make periodic written disclosures to Plans with respect to the financial condition of the Partnership;

(l) The Partnership has not engaged and will not engage in swaps transactions, as defined in Section III(d) above;

(m) The Partnership has not invested and will not invest in any entity in which MS&Co or any of its affiliates has an ownership interest;

(n) Affiliates of MSCM have not invested in and will not invest in the Partnership;

(o) The non-U.S. commodity trading activities of the Partnership has been and will be limited to the LME;

(p) The Applicants have not accepted and will not accept subscriptions by Plans which permit participants to exercise control over the decision to acquire or redeem Units; and

(q) As of the effective date of this exemption and thereafter, MSCM has maintained and shall maintain for a period of time the records necessary to enable certain persons to determine whether the conditions of this exemption have been met.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption will include prospective Plan investors, and Plan Fiduciaries of Plans which have already invested in the Partnership. Because the Applicants are uncertain as to which Plans will invest in the Partnership, the Department has determined that the only practical form of providing notice to interested persons of the pendency of this proposed exemption is the distribution by the Applicants of a copy of the Notice, as published in the **Federal Register**, and a copy of the supplemental statement, in the form set forth in the Department's regulations under 29 CFR § 2570.43(b)(2) to any Plan investors who at the time the Notice is published are interested in investing in the Partnership, and to the fiduciaries of all Plans that are invested in the Partnership at the time the Notice is published. Such distribution will be effected by first-class mail within fifteen (15) days of the publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

National Rural Utilities Cooperative Finance Corporation (CFC), Located in Washington, D.C.

[Application No. D–10394]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570 Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

A. If this proposed exemption is granted, effective November 18, 1997, the restrictions of sections 406(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions relating to the refinancing by CFC of certain rural utility cooperative loans made to the Kansas Electric Power Cooperative, Inc. (KEPCO), and certain notes issued by KEPCO in connection with such loans which are assigned to trusts for which CFC acts as servicer, and certificates evidencing interests in such trusts:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between CFC or an underwriter and an employee benefit plan when CFC, the underwriter, or the trustee is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates;

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2); and

(4) The purchase by CFC of existing notes issued by KEPCO from the existing trusts and the contribution by CFC of new notes to new trusts pursuant to the refinancing of KEPCO's existing loans on the scheduled refinancing date (i.e. December 18, 1997).

B. If the proposed exemption is granted, effective November 18, 1997, the restrictions of sections 406(a) and 406(b) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding trust agreement; and

(2) The trust agreement is provided to, or described in all material respects in, the prospectus or private placement memorandum provided to investing plans before they purchase certificates issued by the trust.[9]

C. If this proposed exemption is granted, effective November 18, 1997, the restrictions of sections 406(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates issued pursuant to this proposed exemption or issued pursuant to Prohibited Transaction Exemption 89–93 (PTE 89–93, 54 FR 45816, October 31, 1989).[10]

Section II—General Conditions

A. The relief described under Section I of this proposed exemption will be available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Ratings Service (S&P's) or Moody's Investors Service, Inc. (Moody's; together, the Rating Agencies);

(4) The trustee is not an affiliate of any other member of the Restricted

[9] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

[10] PTE 89–93 permits, as of July 22, 1987, certain transactions between CFC and employee benefit plans where CFC may be deemed to be a party in interest with respect to the plans as a result of providing services to a trust in situations where the assets of the trust are considered to be ''plan assets'' as a result of the plans acquiring significant ownership interests in the trust in the form of pass-through certificates.

Group. However, the trustee shall not be considered to be an affiliate of CFC, as servicer, solely because the trustee has succeeded to the rights and responsibilities of CFC pursuant to the terms of a trust agreement providing for such succession upon the occurrence of one or more events of default by CFC;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by CFC, as sponsor, pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by CFC, as servicer, represents not more than reasonable compensation for CFC's services under the trust agreement and reimbursement of CFC's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission (SEC) under the Securities Act of 1933;

(7) Any swap transaction entered into by KEPCO which is assigned to a trust is entered into with a bank or other financial institution of high credit standing, initially Morgan Guaranty Trust Company of New York (Morgan), with a credit rating of at least AA or an equivalent rating from the Rating Agencies;

(8) The bank or other financial institution acting as the swap counterparty to the trust is required, if there is an adverse change in such counterparty's credit rating, to either: (i) Post collateral with the trustee of the trust in an amount, determined daily, equal to all payments owed by the counterparty if the swap transaction were terminated; or (ii) find a replacement swap counterparty for the trust, within a specified period under the terms of the swap agreement with the trust, which has a credit rating of at least AA or an equivalent rating from the Rating Agencies; provided that if the swap counterparty fails to abide by its obligations under either (i) or (ii) above, the swap agreement shall terminate in accordance with the rights and obligations of each counterparty under the terms thereof, which shall be enforced by the trustee to protect the rights of certificateholders of such trust;

(9) Each swap transaction between a trust and Morgan, or other swap counterparty, in connection with the refinancing of KEPCO's loans requires payments to be made to the trust monthly (or at such other times as required under the swap agreement) and requires payments to be made by the trust no less frequently than semi-annually, but in no event shall the trust be obligated to make payments to a swap counterparty more frequently than those which it is entitled to receive from a swap counterparty;

(10) The certificateholders have the right to exit the transaction by tendering the certificates to an underwriter (initially, Alex. Brown & Sons, Inc.) for purchase at par (plus accrued interest) on seven (7) days' notice;

(11) The U.S. Government guarantees the payment of principal and interest on the loans made by CFC to KEPCO;

(12) The purchase of notes issued by KEPCO from the existing trusts is for a price which is at least equal to the outstanding principal balance of such notes, plus accrued (but unpaid) interest, at the time of the scheduled refinancing of the loans made by CFC to KEPCO (i.e. December 18, 1997); and

(13) The certificates are not sold to any plans established and maintained by KEPCO or CFC, or to plans for which any other member of the Restricted Group (as defined in Section III.E. below) is an investment fiduciary for the assets of the plan that are to be invested in the certificates.

B. Neither CFC nor the trustee shall be denied the relief that would be provided under Section I of this proposed exemption if the provision of Section II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that: (1) Such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in Section II.A.(6) above.

Section III—Definitions

For purposes of this proposed exemption:

A. *Certificate* means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust.

For purposes of this proposed exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust, and consists solely of:

(1) One or more notes issued by KEPCO which shall be guaranteed as to payment of principal and interest by the U.S. Government, acting through the U.S. Department of Agriculture's Administrator of the Rural Utilities Service (RUS), including fractional undivided interests in any such obligations;

(2) Property which has secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) Rights of the trustee under the trust agreement, and rights under any insurance policies, third-party guarantees, swap agreements, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

C. *Underwriter* means an entity which has received an individual prohibited transaction exemption from the Department that provides relief for the operation of asset pool investment trusts that issue ''asset-backed'' pass-through securities to plans, that is similar in format and structure to this proposed exemption (the Underwriter Exemptions);[11] any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; and any member of an underwriting syndicate or selling group of which such firm or person described above is a manager or co-manager with respect to the certificates.

D. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

E. *Restricted Group* with respect to a class of certificates means:

[11] For a listing of the Underwriter Exemptions, see Section V(h) of PTE 95–60, 60 FR 35925, July 12, 1995.

(1) Each underwriter/remarketing agent;
(2) The trustee;
(3) CFC;
(4) KEPCO;
(5) The swap counterparty/liquidity provider; or
(6) Any affiliate of a person described in subsection E.(1)–(5) above.

F. *Affiliate* of another person includes:
(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;
(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and
(3) Any corporation or partnership of which such other person is an officer, director or partner.

G. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

H. A person will be *independent* of another person only if:
(1) Such person is not an affiliate of that other person; and
(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

I. *Sale* includes the entrance into a forward delivery commitment (as defined in subsection J. below), provided:
(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;
(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and
(3) At the time of this delivery, all conditions of this proposed exemption applicable to sales are met.

J. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

K. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

L. *Trust Agreement* means the agreement or agreements among KEPCO, CFC and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, *Trust Agreement* also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

M. *RUS* means the U.S. Department of Agriculture, acting through the Administrator of the Rural Utilities Service or any successor to the guarantee obligations of such organization.

The Department notes that this proposed exemption, if granted, will be included within the meaning of the term ''Underwriter Exemption'' as it is defined in Section V(h) of the Grant of the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, which was published in the **Federal Register** on July 12, 1995 (see PTE 95–60, 60 FR 35925).

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of November 18, 1997.

Preamble

On October 31, 1989, the Department granted an individual administrative exemption under section 408(a) of the Act to CFC (PTE 89–93) for several prohibited transactions relating to CFC's role as a financial intermediary in the refinancing of various loans to rural utility cooperatives. CFC now proposes that two of the loans involving KEPCO that were refinanced using the structure involved in PTE 89–93 be refinanced through a new series of transactions. CFC requests a new individual exemption for these refinancing transactions.

CFC states that the restructured KEPCO loans and the trust structure through which interests in these loans will be offered to institutional investors, including employee benefit plans, are in many respects similar to the transactional structure presented in PTE 89–93. However, under the new refinancing structure, the interest rate on the trust certificates will be a variable rate rather than a fixed rate guaranteed by the U.S. Government. The floating rate will be paid through an interest rate swap transaction between the trust and a bank or other financial institution acting as a swap counterparty (initially, Morgan). Thus, the variable rate on the certificates will not be guaranteed by the U.S. Government, although if the bank fails to make the variable rate payments, as required, the fixed rate guaranteed payments on the notes will be applied to the variable rate payments due on the certificates.

In addition, the new exemption requested by CFC has been expanded to include: (i) The purchase by CFC of the existing KEPCO notes and the contribution of amended KEPCO notes to the new trusts; and (ii) the servicing, management and operation of the trusts in a manner that is generally the same as the relief provided by the Department in other exemptions involving asset-backed securities (i.e., the Underwriter Exemptions).

Summary of Facts and Representations

1. The Applicant. CFC is a tax-exempt, not-for-profit cooperative association organized in 1969 under the laws of the District of Columbia. CFC was established by its members to provide them with a source of financing to supplement the loan programs of RUS (which was formerly known as the Rural Electrification Administration (REA)), a guarantor of loans made to rural electric utilities. CFC is a finance company that makes loans to its rural utility system members to enable them to acquire, construct and operate electric distribution, generation, transmission and related facilities. Most CFC long-term loans to its members are made in conjunction with concurrent loans from RUS and are secured equally and ratably with RUS' loans by a single mortgage. The principal and interest obligations under CFC's loans are guaranteed by RUS (the RUS Guarantee).

CFC also provides guarantees for tax-exempt financings of pollution control facilities and other properties constructed or acquired by its members, and provides guarantees of other debt in connection with certain leases and other transactions of its members. CFC presently has loans outstanding to its members in the aggregate principal amount of approximately $8.0 billion and has guaranteed on behalf of members an additional $2.3 billion in obligations. CFC acts as the servicer under six trusts that were established in 1988 to refinance certain rural utility cooperative loans guaranteed by REA in transactions eligible for the exemption provided by PTE 89–93. CFC also provides financial advisory services to its members.

As of May 31, 1996, CFC's 1051 members were generally non-profit cooperative electric utilities and service organizations and represented approximately 95 percent of the total number of such entities in the United States. As of December 31, 1995, CFC's member systems owned approximately $66.5 billion (before depreciation of $19.4 billion) in total utility plants and equipment. Funds for CFC's programs are derived primarily from the sale to its members of its subordinated debt, the sale of collateral trust bonds, medium-term notes and commercial paper in the capital markets and from retained earnings. As of May 31, 1996, outside investors held approximately $1 billion of CFC collateral trust bonds, $604 million of CFC medium term notes and $4.7 billion of CFC commercial paper. CFC has approximately $1.0 billion principal amount of bonds listed on the New York Stock Exchange and registered under Section 12(b) of the Securities Exchange Act of 1934.

In the refinancing transactions that are the subject of this proposed exemption, CFC will act as the servicer of the new trust that will be established for purposes of holding the note or notes (with the RUS Guarantee) that are issued by KEPCO, a rural utility cooperative (KEPCO Notes). In addition, there will be a fixed to floating interest rate swap entered into between KEPCO and Morgan Guaranty Trust Company of New York (Morgan), a financial counterparty of high credit standing. The interest rate swap will be assigned to the trust by KEPCO. CFC will service the KEPCO Note(s) and the RUS Guarantee in accordance with the terms and conditions of the trust agreement (the Trust Agreement) under which the trust (the Trust) will be established.

2. The Trustee. The Trustee, which is The First National Bank of Chicago (First Chicago), is the legal owner of the assets in the Trust. The Trustee is also a party to, or beneficiary of, all the documents and instruments deposited in the Trust. The Trustee is responsible for enforcing all the rights created by the Trust in favor of the certificateholders. In the proposed transactions, the Trustee will be an independent entity and, therefore, will be unrelated to CFC, KEPCO, the swap counterparty and the underwriter. The Trustee will monitor and administer the swap agreement that will be assigned to the Trust.

CFC represents that the Trustee will be a substantial financial institution or trust company experienced in trust activities. The Trustee receives a fee for its services, which will be specified in the trust agreement and will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

3. The Underwriter. It is anticipated that the certificates will be registered under the Securities Act of 1933 and will be sold in a public offering on a firm commitment basis. Each underwriter will be an entity which has received an individual prohibited transaction exemption from the Department that provides relief for the operation of asset pool investment trusts that issue so-called ''asset-backed'' pass-through securities to plans (an Underwriter Exemption), an affiliate of such entity, or a member of an underwriting syndicate of which such entity is a manager or co-manager (see Section III.C above). The lead underwriter will act as the remarketing agent (Remarketing Agent) with respect to the certificates. If the certificates are sold to institutional investors in a private placement under Section 4(2) of the Securities Act and Rule 144A thereunder, the registered broker-dealer acting as placement agent will also act as the Remarketing Agent with respect to the certificates. The role of the Remarketing Agent is described further below.

4. The Swap Counterparty. The swap counterparty will be a bank or financial institution of high credit standing with a credit rating of at least AA or an equivalent rating from the Rating Agencies. As noted earlier, initially the swap counterparty will be Morgan. Morgan will continue to be the swap counterparty unless there is an event, such as a credit rating downgrade of Morgan, which requires a replacement of the swap counterparty under the terms of the swap. Thus, if there is such an adverse change in Morgan's credit rating, the swap agreement will require Morgan to either: (i) post collateral with the Trustee of the Trust in an amount, determined daily, equal to all payments owed by Morgan if the swap transaction were to be terminated by KEPCO; or (ii) find a replacement swap counterparty for the Trust, within a specified period, which has a credit rating of at least AA or an equivalent rating from the Rating Agencies. Otherwise, the swap agreement will terminate in accordance with its terms and the Trustee will be responsible for enforcing all rights created in favor of the certificateholders of the Trust.

The Subject Transactions

5. The proposed transactions for which exemptive relief is requested are described by the Applicant in the context of certain refinancing arrangements involving loans that were made by CFC to KEPCO (*i.e.* Kansas Electric Power Cooperative Inc). These refinancing transactions were initiated with the cooperation of the U.S. Department of Agriculture, acting through the Administrator of RUS. The Applicant represents that the subject transactions have been designed to further a U.S. Congressional policy to facilitate the reduction of the financing costs for rural electric power cooperatives and to reduce the U.S. Government's possible exposure as the guarantor of the debt of such cooperatives.

6. In 1988, KEPCO had outstanding certain loans from the U.S. Federal Financing Bank (the FFB Loans) which were guaranteed by RUS (then, the REA). Pursuant, to Section 306A of the Rural Electrification Act of 1936, as amended (the RE Act) and the implementing regulations thereunder (the Regulations), the FFB loans were refinanced in the following manner.

First, CFC loaned KEPCO the amount necessary to prepay the FFB Loans pursuant to a Loan Agreement, dated as of February 15, 1988 (the Loan Agreement). To evidence its repayment obligations to CFC, KEPCO executed three lender loan notes (the Notes). Then, CFC deposited each of the three Notes in a separate grantor trust—Trust K–1, Trust K–2, and Trust K–3 (collectively, the 1988 Trusts), pursuant to three Trust Agreements between CFC, KEPCO and First Chicago, as Trustee. The original REA guarantee of the FFB Loans (the Guarantees) was transferred to each of the Notes before they were deposited in the 1988 Trusts.

The obligations of (i) CFC to service the Notes while they were in the 1988 Trusts, (ii) the U.S. Government acting through the Administrator of the REA, as guarantor, to guarantee payment of principal and interest (as defined in the Loan Agreement) on the Notes under the Guarantees, and (iii) the Trustee with respect to the Guarantees, were contained in a Loan Guarantee and Servicing Agreement dated February 15, 1988 (the Loan Guarantee Agreement). Trust K–1, Trust K–2, and Trust K–3 issued certificates of beneficial interest in the assets of the 1988 Trusts (the Series 1988 Certificates) to CFC as depositor of the 1988 Trusts. CFC then sold the Series 1988 Certificates (other than from Trust K–3) to investors pursuant to a registered public offering of the Series 1988 Certificates. The Applicant states that these transactions were the subject of the relief provided by PTE 89–93, and similar refinancing transactions were effected for other rural electric cooperatives.

Note One and Note Two (the Outstanding Notes), which were deposited in Trust K–1 and Trust K–2, respectively, will mature on December 4, 2002 and December 4, 2017, respectively.[12] Pursuant to the terms of the Loan Agreement, Note One and Note

[12] Note Three, originally deposited in Trust K–3, matured by its terms on December 4, 1988, and the certificates representing ownership interests in Trust K–3 were redeemed and Trust K–3 was terminated by the Trustee.

Two will become available for purchase at the election of KEPCO by a purchaser designated by KEPCO on any business day on or after the day immediately prior to December 15, 1997. The Series 1988 Certificates representing ownership interests in Trust K–1 and Trust K–2 are subject to purchase or redemption upon the prepayment or purchase of the Outstanding Notes.

7. The Proposed Refinancing Transaction. KEPCO and RUS are proposing to refinance the Outstanding Notes using the transactions described below. KEPCO will redeem the outstanding Series 1988 Certificates by exercising, on December 18, 1997 (the Refinancing Date), the right given in the Loan Agreement to have the Outstanding Notes purchased by CFC at a specified premium over par[13] (plus accrued interest), and the Outstanding Notes will thereafter be amended (the Amended Outstanding Notes) to reduce the guaranteed interest rate payable by KEPCO or by RUS, as guarantor of the Outstanding Notes.

CFC will direct the Trustee (i.e. First Chicago), as trustee of Trust K–1 and Trust K–2, to terminate Trust K–1 and Trust K–2 after the owners of the Series 1988 Certificates are paid in full. The Trustee will be directed to transfer the Amended Outstanding Notes, with the Guarantees attached, to a single new grantor trust (the Series 1997 Trust) established pursuant to the Trust Agreement. The Trustee of the Series 1997 Trust will be First Chicago.

This refinancing structure was designed to lock in current interest rates for new loans to KEPCO as of the preliminary closing date for such refinancing (December 20, 1996), instead of waiting until the actual Refinancing Date (December 18, 1997) when rates may be higher. In particular, KEPCO has entered into a forward interest rate swap agreement (the Swap Agreement) with Morgan as the swap counterparty. KEPCO will assign its right to receive and make payments under the Swap Agreement, effective as of the Refinancing Date, to the Trustee for the Series 1997 Trust (i.e. First Chicago). Morgan is currently rated AAA by S&P and Aa1 by Moody's. The Swap Agreement will require Morgan to post collateral with the Trustee, for the benefit of certificate-holders, if Morgan's credit ratings are reduced to below AA or an equivalent rating by the Rating Agencies during the term of the Swap Agreement. Such collateral must be in the form of highly stable and liquid fixed-income securities, such as short-term debt securities issued and/or guaranteed by the U.S. Government or an agency or instrumentality thereof or debt securities issued by non-U.S. Government entities which have credit ratings comparable to those of the certificates. The amount of such collateral will be determined daily and will be equal to all payments owed by Morgan under the Swap Agreement in the event the swap were terminated.

Pursuant to the terms of the Swap Agreement, KEPCO will agree to pay a fixed rate of interest to Morgan on each December 4th and June 4th following the Refinancing Date until the maturity of the Amended Outstanding Notes. In return, Morgan will agree to pay to KEPCO a variable rate of interest at the times interest is payable on the Series 1997 Certificates. As noted earlier, KEPCO will assign its right to receive and make payments under the Swap Agreement to the Trustee on the Refinancing Date. On such date, CFC will deposit the Amended Outstanding Notes, with the RUS Guarantees attached, into the Series 1997 Trust. The Series 1997 Trust will issue certificates of beneficial interest (the Series 1997 Certificates) which will have interest distributable to holders of the Series 1997 Certificates (the Series 1997 Certificateholders) at a variable market rate of interest. The variable market rate will be initially set by the Remarketing Agent, and reset weekly by the Remarketing Agent, based on an independent index for 30-day commercial paper known as the H.15 Index, which is compiled daily by the New York Federal Reserve Bank. The variable rate of interest on the Series 1997 Certificates will determine the variable rate of interest payable to the Trustee by Morgan pursuant to the Swap Agreement, which payments will be distributed monthly to the Series 1997 Certificateholders, or at other times as set forth in the Series 1997 Trust Agreement. The initial variable rate on the certificates will be known to investors, including plans, approximately one week before the Refinancing Date.

When installments or payments are made by KEPCO on the Amended Outstanding Notes, the funds are placed in a segregated account established in the name of the Trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the Trustee. However, the account's assets are invested at the direction of CFC in short-term securities described in the Trust Agreement which have received a rating comparable to the rating assigned to the certificates. In addition, CFC will furnish a report on the operation of the Trust to the Trustee on a monthly basis.

Because of the structure of the refinancing, the credit behind the Series 1997 Certificates will be bifurcated. First, if KEPCO fails to pay the Trustee any amounts on the KEPCO Notes, Series 1997 Certificateholders will look to the guarantee provided by the U.S. Government (acting through RUS) for payment of principal, which will continue to be distributed to Series 1997 Certificateholders annually each December 15. Second, Series 1997 Certificateholders will look to the credit of Morgan for the variable rate payments of interest to be made on the Series 1997 Certificates.[14] If Morgan fails to make any variable rate payment when due, amounts received by the Trustee from KEPCO (or RUS as guarantor) for interest on the Amended Outstanding Notes, less a servicing fee payable to CFC, will become payable, to the extent of the amount of the defaulted payment, to the Series 1997 Certificateholders. Morgan, or another financial institution of comparable credit standing selected by Morgan, will provide liquidity support for the tender rights (Tender Rights) that attach to the Series 1997 Certificates. The Tender Rights will enable certificateholders to sell the Series 1997 Certificates back to the Remarketing Agent at any time upon seven (7) days notice.

As noted earlier, the documentation executed and delivered for the KEPCO refinancing will be executed in three closings:

(i) The preliminary closing on December 20, 1996, at which time most of the operative documents were executed and delivered (the Preliminary Closing);

(ii) The Deposit Date closing on November 18, 1997 (the Deposit Date Closing), at which time the offering documentation was delivered and CFC deposited the purchase price for KEPCO's Outstanding Notes with the Series 1988 Trustee and gave advance notice that the purchase is to occur on December 18, 1997; and

(iii) The Refinancing Date closing on December 18, 1997, at which time KEPCO's Outstanding Notes will be purchased by CFC from the 1988 Trusts

[13] This premium amount will be distributed to the certificateholders of the Series 1988 Certificates issued by Trust K–1 and Trust K–2.

[14] Morgan has the obligation to continue to make timely payments under the Swap Agreement even in the event of a default by KEPCO. In such instances, Morgan will look to the guarantee provided by the U.S. Government for future payments of interest on the Amended Outstanding Notes, which the Trustee will use to make the semi-annual payments to Morgan under the Swap Agreement.

and the amended Outstanding Notes will be delivered to the Trustee of the Series 1997 Trust, after which the Series 1997 Certificates will be issued and sold to investors.

The Applicant states that in order to eliminate or to minimize creditors' risks, forward purchase transactions are structured so that as little as possible is left to the discretion of the parties after the first commitment is made. Consequently, virtually all of the binding commitments for the proposed refinancing were made at the Preliminary Closing. The fixed rate payable to Morgan by KEPCO under the Swap Agreement (i.e. 7.654 percent per annum) was established at the time of the signing of such Agreement. That fixed rate, plus the servicing fee payable to CFC, will determine the new guaranteed interest rate on the Amended Outstanding Notes, effective upon the sale of the Certificates to the Underwriters on the Refinancing Date.

KEPCO and CFC entered into a First Amendment to the Loan Agreement at the Preliminary Closing which obligates CFC, subject to certain conditions, to provide the funds for the purchase of Note One and Note Two on the Deposit Date Closing. In addition, the First Amendment to the Loan Agreement contains the operative amendments to the Loan Agreement, which will serve to reduce the interest rate on the Outstanding Notes and to remove any call protection or call premium from the Outstanding Notes. The amendments will become effective on the Refinancing Date. However, if upon issuance of the Certificates to CFC the Certificates are not sold to the Underwriter for any reason, CFC will hold the Certificates and receive the existing fixed interest rate on the Amended Outstanding Notes. Pursuant to a separate agreement, KEPCO will make up any loss CFC may incur in funding the carrying of the Certificates and will receive a credit for any ''float'' CFC realizes while holding the Certificates. The RUS does not guarantee any such additional payments to CFC that may be required from KEPCO.

8. The Sale of the Certificates. At the Preliminary Closing, KEPCO and CFC entered into a forward certificate purchase agreement with Alex. Brown & Sons, Inc. (Alex Brown), as Underwriter of the Series 1997 Certificates, pursuant to which KEPCO and CFC obligated themselves, subject to certain conditions, to sell the Series 1997 Certificates to Alex Brown on the Refinancing Date. Alex Brown committed to purchase and resell the Series 1997 Certificates at par on such date in a firm commitment public offering registered with the SEC. The prospectus (or private placement memorandum if the sale to investors is converted to a private placement under SEC Rule 144A) for the Certificates will provide detailed information about the Amended Outstanding Notes, the RUS Guarantee, the Trust, the Swap Agreement, and the rights and entitlements of the Series 1997 Certificateholders. The compensation payable to CFC, as servicer of the Trusts, and to the Trustee will be set forth in the Trust Agreement and will be described in detail in the prospectus relating to the Series 1997 Certificates.

The Applicant states that once the lower fixed guaranteed interest rate on the Amended Outstanding Notes is established and the Series 1997 Certificates are sold to investors, neither the KEPCO nor RUS will ever have to pay more than such rate. Morgan, as the swap counterparty, will be paying the ''market rate'' on the Series 1997 Certificates for the remaining terms of the Notes. Consequently, Morgan has an interest in insuring that the Series 1997 Certificates are sold at an appropriate market rate and that such rate is reset weekly at an appropriate market rate. If investors (including plans) are not satisfied with the variable interest rates paid on the Series 1997 Certificates, as reset weekly by the Remarketing Agent, then such Certificateholders may exercise their Tender Rights to require the Remarketing Agent to repurchase the Certificates at par plus accrued interest. In such instances, Morgan or another qualified financial institution of comparable credit quality will stand behind the Remarketing Agent with liquidity support to enable that entity to honor the Tender Rights.

The rate payable for the Series 1997 Certificates will be determined by a Remarketing Agent (initially, Alex Brown) as being the minimum rate of interest necessary, in the Remarketing Agent's judgment, to enable the Remarketing Agent to sell the Series 1997 Certificates at par. As noted above, when the Series 1997 Certificates are in the ''weekly rate mode'', the Certificateholders will have the right at all times to exercise their Tender Rights to tender their Certificates for repurchase by the Remarketing Agent at par (plus accrued interest) on any business day upon seven (7) days notice.[15] CFC, as servicer, will verify and confirm to the Trustee the information provided by Morgan and the Remarketing Agent for the variable interest rate payments.

Although the Series 1997 Trust Agreement permits the swap counterparty (i.e. Morgan) and the Remarketing Agent (i.e. Alex Brown) to lengthen the interest reset period from seven (7) days (and the right to tender Certificates would exist only at the end of such longer reset period), any such change will result in a mandatory repurchase of all outstanding certificates (at par plus accrued interest) before it becomes effective. Thus, any Certificateholders that want to continue to invest in the Certificates under the new conditions will have to make an affirmative decision to do so. As stated above, in order to assure the operation of these provisions regarding Tender Rights of Certificateholders, KEPCO will enter into a liquidity protection agreement with Morgan pursuant to which Morgan will agree to provide, or cause another qualified financial institution of comparable credit quality to provide, a liquidity facility during the term of the Swap Agreement.

The Swap Agreement will be in effect until the maturity of the Series 1997 Certificates. After the Refinancing Date, the financial condition or performance of KEPCO will not affect the requirement of Morgan's performance under the Swap Agreement. However, KEPCO and RUS (should RUS become the payor of the Amended Outstanding Notes pursuant to the Guarantees) will have the right to terminate the Swap Agreement and prepay or purchase the Amended Outstanding Notes at any time after the Refinancing Date (after providing notice as specified in the Loan Agreement and the Trust Agreement). There are no prepayment penalties attached to KEPCO's right to prepay the Amended Outstanding Notes. However, with respect to the resulting termination of the Swap Agreement, prior to prepaying or purchasing the Amended Outstanding Notes, any termination payment owing under the Swap Agreement must be paid by KEPCO (or RUS). Consequently, depending on market conditions and interest rates, KEPCO (or RUS) could be obligated to make a payment to Morgan or could be entitled to receive a

[15] As noted earlier, the 7-day reset by the Remarketing Agent will be priced based on the H.15 Index, a 30-day commercial paper index, which is compiled daily by the New York Federal Reserve Bank. The H.15 Index is readily available to fixed income investors through data services, conversations with broker-dealers, on-line reports, and other transactions in which such investors participate. This information would be used by certificateholders on a continuous basis to determine both the anticipated level of repricing as well as to evaluate whether the repriced certificates continue to meet their investment needs.

payment from Morgan, in the event of termination of the Swap Agreement.[16]

The Applicant states that the refinancing is intended to emulate, as closely as possible, the 1988 refinancing, except that the certificates will have a variable rate of return. The parties to the 1997 transaction are the same as the parties to the 1988 transaction with the exception of Morgan and Alex Brown—the parties involved in making the Series 1997 Certificates available as variable rate securities. As with the 1988 refinancing, the Applicant anticipates that the Certificates will be acquired by employee benefit plans subject to the Act.

CFC is participating in this transaction to facilitate the refinancing of the existing loans (as evidenced by Note One and Note Two) to KEPCO under applicable U.S. Department of Agriculture regulations and guarantee programs. CFC does not intend to take a proprietary interest in the Amended Outstanding Notes. The purchase of the Amended Outstanding Notes by CFC and the contribution of such Notes to the Series 1997 Trust will occur virtually simultaneously and will be for the same consideration. CFC will continue to receive servicing fees for the Series 1997 Trust (as discussed below) and a fee for the 30-day period between its prepayment of the purchase price for the Amended Outstanding Notes and the closing of the sale of the Series 1997 Certificates to the Underwriters on the Refinancing Date.

The Series 1997 Certificates will have received one of the three highest ratings available from either S&P or Moody's, or both. The Applicant states that these ratings will be based, in part, on the RUS Guarantee and the high credit standing of Morgan as the swap counterparty and the liquidity provider.

In this regard, the entire KEPCO refinancing transaction (including the proposed swap transaction) has been reviewed by Moody's and S&P for the purpose of rating the certificates. S&P has concluded the following: (a) the long-term rating on the certificates would be the lower of (i) ''AAA'', based on the guarantee provided by the U.S. Government acting through the Administrator of the RUS, or (ii) the rating of the swap counterparty (i.e. Morgan, which is currently rated ''AAA''). The short-term rating on the certificates would be the short-term rating of the entity providing the standby certificate purchase agreement. This entity will be either Morgan or another financial institution that is rated P–1, the highest short-term credit rating available. Moody's has also concluded that the certificates would be rated Aa1 (long-term) and P–1 (short-term), based on the guaranty provided by the U.S. Government, the swap agreement with Morgan, and the standby certificate purchase agreement provided by either Morgan or another P–1 rated entity.

9. *Disclosure.* The prospectus (or private placement memorandum) to be issued in connection with the original issuance of the Series 1997 Certificates, will contain information material to a fiduciary's decision to invest in the Certificates, including:

(i) Information concerning the payment terms of, and the rating of, the Series 1997 Certificates;

(ii) A description of the operation of the Trust as a separate entity and of how the Trust was formed by CFC;

(iii) Identification of First Chicago as the independent trustee for the Trust;

(iv) A description of the assets contained in the Trust (i.e. the Amended Outstanding Notes, the RUS Guarantee and the swap, including their principal terms and their material legal aspects, as well as financial information regarding Morgan, as the swap counterparty);

(v) A description of CFC, its role in the refinancing and its role as the servicer of the Trust;

(vi) A description of the Trust Agreement, including a description of the procedures for collection of payments on the Notes, the payments to be made under the Swap Agreement and the procedures for making distributions to certificateholders; a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation that may be deducted from any payments before distributions are made to certificateholders; a description of periodic statements to be provided to the Trustee and provided to or made available to certificateholders by the Trustee; and a description of the events that constitute events of default under the Trust Agreement and a description of the Trustee's and the certificateholders' remedies with respect thereto;

(vii) A description of the RUS Guarantee;

(viii) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through certificates by a typical investor;

(ix) A general discussion of the fiduciary and prohibited transaction considerations that are to be taken into account by a fiduciary under the Act considering the purchase of the Series 1997 Certificates,[17] including a brief description of the exemption (if granted) and a discussion of the potential need for compliance by plan investors with certain prohibited transaction class exemptions issued by the Department in connection with the swap transaction;[18]

(x) A description of the underwriters' plan for distributing the pass-through certificates to investors, including the structure and operation of the variable interest rate reset mechanism; and

(xi) Information about the scope and nature of the secondary market for the certificates, the operation of the put rights, the role of the liquidity provider and financial information regarding the liquidity provider (which will be Morgan or a financial institution of comparable credit standing).

10. The RUS Guarantee. The Applicant states that RUS has endorsed on each Outstanding Note its guarantee of the timely payment of principal and interest on such Note and, on or before the Preliminary Closing, will have consented to an amendment of each Outstanding Note to lower the

[16] In no event will the Trust be obligated to make termination payments to Morgan, or another swap counterparty, in the event KEPCO purchases the Amended Outstanding Notes.

[17] The Department wishes to note that ERISA's general standards of fiduciary conduct would apply to the investment described in this proposed exemption, and that satisfaction of the conditions of this proposal should not be viewed as an endorsement of the investment by the Department. Section 404 of ERISA requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, the plan fiduciary must act prudently with respect to the decision to enter into an investment transaction. The Department further emphasizes that it expects the plan fiduciary to fully understand the benefits and risks associated with engaging in a specific type of investment, following disclosure to such fiduciary of all relevant information. In addition, such plan fiduciary must be capable of periodically monitoring the investment, including any changes in the value of the investment. Thus, in considering whether to enter into a transaction, a fiduciary should take into account its ability to provide adequate oversight of the particular investment.

[18] See PTE 84–14, 49 FR 9494, March 13, 1984 (regarding transactions entered into for plans by a ''qualified professional asset manager'' or ''QPAM''), PTE 90–1, 55 FR 2891, January 29, 1990 (regarding transactions entered into by insurance company separate accounts), PTE 91–38, 56 FR 31966, July 12, 1991 (regarding transactions entered into by bank collective investment funds), PTE 95–60, 60 FR 35925, July 12, 1995 (regarding transactions entered into by insurance company general accounts), or PTE 96–23, 61 FR 15975, April 10, 1996 (regarding transactions entered into for plans by ''in-house'' asset managers). In this regard, the Department is not providing any opinion in this proposed exemption as to whether the conditions of such class exemptions would be met for a swap transaction between the Trust and Morgan, or any other bank or financial institution acting as a swap counterparty to the Trust.

guaranteed interest rate thereon and to make the other amendments described below for the servicing of the Outstanding Notes. The RUS Guarantee is a full faith and credit obligation of the United States of America. RUS will be required to pay the Trust the amount of any principal and interest not paid when due on an Outstanding Note within five business days of notice of such default from CFC, acting in its capacity as servicer.

11. Servicing of KEPCO's Loans. CFC will contract with RUS and the Trust to service the Amended Outstanding Notes, thereby establishing an agency relationship (as the ''Servicer'') with respect to the Trustee in a manner that complies with the RE Act and the Regulations and described in the terms of the Trust Agreement.

Under the Trust Agreement, the Trustee appoints the Servicer as its attorney-in-fact to prosecute any claims to enforce or collect on each Amended Outstanding Note and Guarantee. However, the Servicer as such attorney-in-fact may not rescind, cancel, release, waive or reschedule the right to collect the unpaid balance on any such Note from KEPCO or RUS. If a court holds that the Servicer is not entitled or able to enforce an Amended Outstanding Note or Guarantee, the Trustee, on behalf of the Trust, is obligated to take such steps as the Servicer deems necessary to enforce such Note or Guarantee.

In administering, servicing and enforcing an Amended Outstanding Note or Guarantee according to the terms of the Trust Agreement, the Servicer after a default in payment on such Note is obligated to exercise such of the rights and powers vested in it by the Trust Agreement and to use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs. Prior to a default in payment on an Amended Outstanding Note, the Servicer is obligated to perform only those duties that are specifically set forth in the Trust Agreement. The Servicer has no liability for any error of judgment made in good faith by it (unless it is proved that the Servicer was negligent in ascertaining the pertinent facts) or for any action it takes or omits to take in good faith in accordance with a direction received by it from the Trustee or the Certificateholders.

In addition to enforcing the Trustee's rights under the Amended Outstanding Note (including the RUS Guarantee) held by the Trust, CFC as the Servicer for the Trust is obligated to fulfill a number of administrative and notice functions under the Trust Agreement. For example, the Servicer is obligated to deliver a notice to KEPCO and the Trustee specifying the date any payment is due on the Note held by such Trust and the amount of such payment. The Servicer is responsible for notification of RUS of any default in the payment of interest and principal on the Amended Outstanding Note held in the Trust. The Servicer is obligated to submit to RUS reports assessing the causes behind, and seriousness of, the default. The Servicer is also obligated to notify RUS of any known violations, defaults or conditions which might lead to a default or violation by KEPCO under the Loan Agreement, the Loan Guarantee Agreement or an Amended Outstanding Note. The Servicer is further obligated to notify RUS of any redemption of the Amended Outstanding Note held by a Trust and to calculate the amount payable on such Note and the related Certificates pursuant to any redemption or purchase of such Note.

The Servicer will handle the billing of Note payments from KEPCO, and will notify RUS promptly of any default under a Loan and of adverse developments affecting KEPCO, but payments on the Note will be made directly to the Trustee and not to CFC. The Trustee will be responsible for monitoring and enforcing the Swap Agreement. In this regard, the Servicer will verify and confirm to the Trustee the information provided by Morgan and the Remarketing Agent with respect to the variable rate of return. The Servicer will also prepare for distribution by the Trustee to Certificateholders regular semiannual reports concerning distributions on the Certificates and its fees, as well as tax information required by Certificateholders. No less often than annually, an independent public accountant will audit the books and records of the Trust. Upon completion, copies of the auditor's reports will be provided to the Trustee.

12. Servicing Compensation. The Servicer will be compensated out of payments on the KEPCO Notes. The servicing fee (out of which the Servicer will pay the Trustee's fees and expenses) will total not more than approximately 1/10 of one (1) percent per annum of the principal amount of the Notes. Because the return to the certificateholders is based upon the floating rate payments made under the Swap Agreement, these reimbursements will not affect the payments to certificateholders.

The Servicer may transfer its duties and obligations with the consent of 51 percent of the certificateholders and the swap counterparty. The Servicer may also be terminated following certain defaults or events of bankruptcy relating to the Servicer. The insolvency of the Trustee or the Servicer will not affect the certificateholders' rights, because the Servicer will not hold any Trust assets, and assets held in a fiduciary capacity by the Trustee should not be subject to claims of the Trustee's general creditors.

13. Description of Certificates. Each Certificate will represent a fractional undivided interest in the Trust. The Certificates will be issued in denominations of $100,000 (and in integral multiples of $5,000 above such amount), and will not be divisible into certificates with original principal amounts below $100,000. The Certificates will be transferable, and may be listed on a national securities exchange. Payments on the Certificates will represent a pass-through of both (i) payments of principal received by the Trustee on the KEPCO Notes held by the Trust, and (ii) the payments to be made by Morgan under the Swap Agreement.[19] Interest on the KEPCO Notes will be payable semi-annually, whereas interest on the floating-rate Certificates will be paid monthly (or on such other periodic basis as may be reset in accordance with the Trust Agreement). Principal payments on both the KEPCO Notes and the Certificates will be payable annually for the period during which each Note amortizes.

The Certificates will be prepaid at any time a Note is prepaid. The Notes will be prepayable at the KEPCO's option in whole (but not in part) at any time at par. KEPCO will be required to accompany its notice of prepayment (to be given in advance in order to permit the Trustee in turn to notify certificateholders of the impending retirement of the Certificates) with cash

[19] It should be noted that the notional principal amount for the swap transaction between the Trust and Morgan, used to determine the payments to be made between the parties, initially will be $57,390,000. As principal payments on the KEPCO Notes are received by the Trustee and passed-through to the certificateholders, the notional principal amount for the swap transaction will be adjusted to equal the outstanding principal balance of the certificates. It should also be noted that, based on the confirmation statement submitted by Morgan, all payments made between the parties will be based on the applicable notional principal amount, the day count fractions, the fixed or floating rates (determined by objective third party sources) designated under the swap agreement, calculated on a one-to-one ratio and not on a multiplier of such rates or with formulas that produce leveraged amounts. However, because the payments will be made between the parties on different dates, there will be no netting of payments. Thus, both parties will be responsible for making the full payments that are due on the designated dates (i.e. semi-annually for KEPCO and monthly for Morgan).

equal to the amount that will be due on such Note at the time of prepayment. This procedure will assure that funds will be available for the prepayment of the Note at the appropriate time. These funds will be invested in obligations issued by the United States or in repurchase agreements.

With the exception of prepayments by KEPCO, all payments on the Note obligations are supported by the full faith and credit of the United States. If KEPCO defaults in making its payments or in its other obligations to RUS, RUS has the option either to pay under the RUS Guarantee principal and interest as they fall due on the KEPCO Note, to proceed against KEPCO and to assume KEPCO's obligations under the KEPCO Note or, if KEPCO could at that time make an optional prepayment of the KEPCO Note, to optionally prepay or purchase the Note. The Trustee (or the Servicer as its agent), and not the certificateholders, will enforce payments due on the KEPCO Notes (or the RUS Guarantee) and the Trustee will enforce payments due under the Swap Agreement. However, a specified percentage of certificateholders may direct the time, method and place of exercising any remedy available to the Trustee or the Servicer, subject to customary trust indenture exceptions. The Trustee may not resign until the Trust is liquidated and the proceeds distributed to certificateholders, unless a successor Trustee has been designated and has accepted such trusteeship.

14. Distributions for the Certificates. Scheduled distributions on the Certificates attributable to payments of principal on the KEPCO Notes will be made 11 days (in the case of regular payments of principal) following the corresponding payment on the Note. This interval will allow time for the Servicer to notify RUS if there is a default by KEPCO in making a payment on the Note and to permit the five business days that RUS has requested before it is obligated to make a payment under the guarantee to elapse before the payment date on the Certificates. As a consequence, if KEPCO defaults, the full faith and credit guarantee payment will fall due before the scheduled payment on the Certificates. As indicated above, if KEPCO elects to prepay its Loan, distributions on the Certificates will be made only after advance receipt of the amounts to be prepaid. This procedure will permit notice of the resulting distribution to be given to certificateholders.

During these periods pending distribution, payments on the KEPCO Notes received by the Trust will be invested at the direction of CFC, as servicer for the Trust, in: (i) obligations issued by the United States (and supported by its full faith and credit), or (ii) repurchase agreements with respect to such obligations, over-collateralized on a basis that will not result in a reduction in the ratings of the Certificates. All such investments must mature before the next scheduled distribution date on the Certificates. The obligations collateralizing the repurchase agreements in question would be marked to market on a daily basis and kept in the possession of the Trustee or in its control through book-entry, unless the Rating Agencies indicate that this is not necessary to maintain the Certificates' rating. The Applicant states that assuming all amounts then due on the KEPCO Notes have been paid in full, any yield on these investments will be returned to KEPCO (or to RUS to the extent of any unreimbursed payments on the RUS Guarantee). The Applicant states further that such yield will not flow through to the Servicer or the certificateholders, or increase the return on their investment, and the prospectus (or private placement memorandum) will make this clear to the certificateholders.

Other Information

15. The Applicant represents the proposed exemption (if granted) for plan investments in the Certificates and the participation by CFC in the refinancing program would be effective as of November 18, 1997, the Deposit Closing Date for the refinancing of KEPCO's existing loans. The plans affected by the requested exemption are those plans that will acquire and hold Certificates representing an interest in a trust established under a trust agreement as described herein, including any plans that own certificates for trusts that were established as a part of the 1988 refinancings. The Applicant states that the Certificates will not be sold to plans established by KEPCO or CFC, or to plans for which either the Trustee, the swap counterparty/liquidity provider, or the underwriter/remarketing agent (or any affiliate of any of the foregoing entities) is an investment fiduciary for the assets of the plan that are to be invested in the Certificates.

16. The Applicant represents that the Department's regulations defining *plan assets* for purposes of the prohibited transaction provisions of the Act [20] provide that a plan that acquires an equity interest in an entity, such as certificates of beneficial ownership in a grantor trust, will be required under certain circumstances to treat the underlying assets of the entity as assets of the plan for purposes of the Act. Generally, this "plan asset look-through" occurs if there is significant participation by benefit plan investors (i.e. 25 percent or more) and the class of equity interests in question are not: (i) held by 100 or more investors independent of the issuer and of each other, (ii) freely transferable, and (iii) either registered under Section 12(b) or 12(g) of the Securities Exchange Act of 1934 (the '34 Act) or sold as a part of an offering pursuant to an effective registration statement under the Securities Act of 1933, and then timely registered under Section 12(b) or 12(g) of the '34 Act. In this regard, the Applicant states that although there will be no restrictions imposed on the transfer of the Certificates and CFC intends to cause the registration requirements to be satisfied, the Certificates may be held by fewer than 100 independent investors at the conclusion of the initial offering. Therefore, if benefit plan investors (including employee benefit plans covered by the Act, governmental plans, etc.) hold, in the aggregate, Certificates representing a 25 percent or greater interest in the Trust, the plan certificateholder's assets will be deemed to include assets of the Trust.

As discussed herein, CFC performs certain services for the Trust as agent for the Trustee according to the terms of the Trust Agreement. CFC will be compensated for such services out of interest payments on KEPCO's Note before payments are made by the Trust to Morgan under the Swap Agreement. The Trustee also has duties and responsibilities for the assets of the Trust for which it will be compensated. Therefore, if the assets of the Trust are deemed to be "plan assets" for the reasons discussed above, the activities of CFC for the Trust would cause it to become a service-provider to the participating plans.

The Applicant states that this "service provider" status gives rise to potential prohibited transactions between the participating plans and CFC. In addition, the "plan asset look-through" may create prohibited transactions between the participating plans and any other parties in interest with respect to such plans that have a relationship to the trust (i.e. members of the Restricted Group, as defined in Section III.E).

17. In summary, the Applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because:

(a) The decision to acquire a certificate will be made on behalf of a

[20] See 29 CFR 2510.3–101.

plan by a fiduciary of the plan who is independent of CFC after receipt of full and detailed disclosure of all material features of the trust and the certificates, including all applicable fees and charges.

(b) The assets of the Trust (i.e. the notes, the RUS Guarantee and the Swap Agreement) are described to prospective purchasers of certificates. Neither CFC nor the Trustee has discretion to substitute assets once the Trust has been formed (except in the limited circumstances where KEPCO is required to obtain a substitute swap agreement from another financial institution of comparable credit quality).

(c) KEPCO's notes are guaranteed as to principal and interest by the United States of America and the certificates will be rated in one of the three highest rating categories by S&P's and/or Moody's.

(d) All actions by CFC and the Trustee with respect to the trust, the assets of the Trust, the certificates and certificateholders will be governed by the Trust Agreement, which will be available to plan fiduciaries for their review prior to the plan's investment in certificates.

(e) The certificates will bear a variable rate of return that will be generally reset weekly; any change in the reset period will require a new investment decision by the certificateholder because of the mandatory redemption (at par plus accrued interest) feature of the certificates.

(f) The variable rate should be closely related to a published independent index (e.g. the H.15 index for 30-day commercial paper, as compiled by the New York Federal Reserve Bank) so that it can be readily monitored by certificateholders. Given the historical range of reset rates, and the put and redemption features of the certificates, any adverse change in the variable rate would have only a de minimis impact on a plan investor's overall return on the certificates.

(g) Alex Brown, a currently identified underwriter, anticipates that it will make a secondary market in the certificates, and the certificateholders will have certain put rights (at par plus accrued interest) which are supported by a liquidity facility provided by a financial institution that is rated in one of the three highest rating categories by S&P's and/or Moody's.

(h) All fees and charges under the Trust and for the Certificates are fixed and reasonable and are disclosed to certificateholders.

(i) CFC and the Trustee will maintain books and records of all transactions which will be subject to annual audit by a certified public accountant.

(j) The certificates will be offered and sold in a public offering or an exempt private placement, with full disclosure in the prospectus or private placement memorandum.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption will include prospective plan investors, and fiduciaries of plans which have already invested in certificates of a trust which holds an existing KEPCO Note. Because CFC is uncertain as to which plans will invest in a new trust, the Department has determined that the only practical form of providing notice to interested persons is the publication of this notice of proposed exemption in the **Federal Register**. However, with respect to plans that are invested in a trust holding an existing KEPCO Note at the time this notice is published, CFC will distribute in redemption notices for the outstanding certificates of the existing trusts a statement that plan investors may request a copy of this notice of proposed exemption within 15 days of the receipt of the notice of redemption. CFC represents that transmittal of redemption notices will occur shortly after the publication of this notice of proposed exemption in the **Federal Register**.

Comments and requests for a public hearing are due within sixty (60) days following the publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Pentair Retirement Savings and Stock Incentive Plan (the Plan), Located in St. Paul, MN

[Application No. D–10472]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale by the Plan (the Sale) of the Plan's remaining interest (the Interest) in two guaranteed investment contracts (the GICs) of Confederation Life Insurance Company (CL) to Pentair, Inc. (Pentair), the sponsoring employer and a party in interest with respect to the Plan; provided the following conditions were met:

(1) The Sale was a one-time transaction for cash;

(2) The Plan received no less than the fair market value of the Interests at the time of the Sale;

(3) The Plan and its participants and beneficiaries have not incurred any expenses or any losses from the Sale; and

(4) Any future distributions from the GICs that exceed the consideration paid by Pentair to the Plan for the Interests shall be paid to the Plan and allocated to the respective accounts of the affected Plan participants.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective on June 13, 1997.

Summary of Facts and Representations

1. Pentair, a Minnesota corporation and located in St. Paul, is a publicly held corporation whose stock is traded on the New York Stock Exchange. It is a diversified manufacturer and vendor of electrical and electronic enclosures, portable and stationary tools and equipment, water products, and sporting and law enforcement ammunition.

The Plan, established by Pentair on January 1, 1984, is a defined contribution plan that is intended to qualify under section 401(a) of the Code. The Plan includes a cash or deferred arrangement that is intended to qualify under section 401(k) of the Code.[21] As of December 31, 1996, the Plan had approximately 9,700 participants and total assets with a fair market value of approximately $270,000,000. The Plan provides for individual participant accounts and permits its participants to self-direct their respective accounts in the Plan (other than the ESOP part of the Plan) into various investment options pursuant to section 404(c) of the Act, including an investment option referred to as the Pooled Stable Return Trust (the PSR Fund), which acquires and holds a pool of fixed income investments. As of December 31, 1996, the PSR Fund held assets with a total fair market value of approximately $72,000,000.

Pentair, as named Plan fiduciary, delegates the administrative responsibilities of the Plan to a Plan

[21] A component of the Plan is an employee stock ownership plan (ESOP) of the stock bonus variety, with its assets held under a separate trust and invested in the stock of Pentair.

Committee (the Committee), currently comprised of Richard W. Ingman, Debby S. Knutson, John T. Moynihan, and Roy T. Rueb, each of whom is an employee of Pentair. Two of the members of the Committee, Richard W. Ingman and Roy T. Rueb (the Fund Trustees), are also the trustees of the PSR Fund.

2. Among the fixed income investments purchased by the Fund Trustees on behalf of the PSR Fund are the GICs, described as follows:

(a) Contract No. 62541 is a single deposit contract acquired from CL on July 26, 1991, for $3,500,000, with a maturity date on June 30, 1996, providing for a guaranteed rate of compound interest at 8.53 percent through maturity.

(b) GIC No. 62608 is a single deposit contract acquired from CL on January 22, 1992, for $5,000,000, with a maturity date on December 31,1996, and which provides for a guaranteed rate of simple interest at 7.21 percent through maturity.

3. On August 11, 1994, Canadian insurance company regulatory authorities seized the assets of CL because of serious liquidity problems confronting CL. On August 12, 1994 (the Seizure Date), the assets of CL located in the United States of America were seized by the Insurance Commissioner for the State of Michigan. On the Seizure Date, legal action was taken to freeze the operations of CL in the United States and to initiate a rehabilitation CL's operations in the United States. Pentair represents that, as of August 12, 1994, the book value of both of the GICs totaled $9,685,734.43 (the Seizure Date Values).[22] Pentair represents that as of the Seizure Date, GIC No. 62541 had a book value of $4,491,311.71 and GIC No. 62608 had a book value of $5,194,422.72, with the total representing approximately 11.7 percent of the total assets in the PSR Fund as of the Seizure Date. Immediately after the Seizure Date, the Fund Trustees took action to freeze a portion of the account balance of each participant account invested in the PSR Fund, and the frozen amount of each such account equaled the percentage of the total PSR Fund assets represented by the Seizure Date Value of the GICs, approximately 11.7% as of the Seizure Date.

4. Subsequent to the Seizure Date, a formal plan of rehabilitation of CL (the Rehab Plan) was developed which offered contract holders such as the PSR Fund the option of participation in the Rehab Plan, by receiving payments over several years, or nonparticipation in the Rehab Plan by receiving a lump sum settlement. The Rehab Plan was approved by rehabilitation authorities on October 23, 1996, and became final 21 days later, and the Fund Trustees elected that the PSR Fund participate in the Rehab Plan. The Fund Trustees represent that pursuant to the Rehab Plan, the Plan has already received from CL's available liquid assets in excess of 100 percent of the Seizure Date Values of the GICs, and that they anticipate from the Rehab Plan an eventual recovery of approximately 110% of the Seizure Date Values. Pentair represents that as of June 13, 1997, the Plan had received a total of $9,723,592 from the Rehab Plan with respect to its investments in the GICs, and that these funds were immediately invested in the PSR Fund's money market fund.

In addition to the funds realized from the Rehab Plan, the Plan has received funds from a state guaranty association. During development of the Rehab Plan, the State of Minnesota, through its Minnesota Life and Health Insurance Guaranty Association (MGA), accepted and confirmed guaranty coverage for the two GICs and thereby provided additional funds to compensate those affected Plan participants residing in Minnesota. Pentair represents that 62.221 percent of the PSR Fund's investment in the GICs was allocable to the participant accounts of Minnesota residents. Pentair represents that as of June 13, 1997, the Plan had received a total of $1,307,732 from MGA with respect to its investments in the GICs, and that these funds were immediately invested in the PSR Fund's money market fund.

Pentair represents that in addition to the funds realized from the Rehab Plan and MGA, as of June 13, 1997 the PSR Fund had also earned a total of $59,080 in interest on the Rehab Plan and MGA payments which had been deposited in the PSR Fund's money market account.

5. In order to assure that all affected participants, regardless of their state of residency, receive a timely and equivalent recovery of their frozen account balances invested in the GICs, and in order to restore to all affected Plan participants complete access to their entire account balances invested in the PSR Fund, Pentair represents that it proceeded on June 13, 1997 to purchase from the Plan the Interest, which is the PSR Fund's entire remaining interest in the GICs (the Interest) by depositing cash into the PSR Fund. For this past purchase of the Interest from the Plan for cash, Pentair requests as exemption under the terms and conditions described herein.

6. Pentair represents that it purchased the Interest from the Plan by depositing cash into the PSR Fund in the amount of $635,672, which was the amount necessary to enable the Plan to have received, from all sources, a total recovery on the GICs in the amount of $11,726,076 (the Total Recovery Amount). Pentair represents that in receiving the Total Recovery Amount, the Plan recovered the Seizure Date Values of the GICs plus interest thereon at the Contract Rates through the maturity dates of each GIC, plus post-maturity interest on each GIC at the rate of five percent from the maturity dates through March 31, 1997, the date established under the Rehab Plan for contract valuation. Pentair represents that the 5 percent rate of interest was the rate of interest established under the Rehab Plan, and accepted by MGA, for the purposes of crediting earnings to the GICs after their contract maturity dates.

7. Pentair represents that by purchasing the Interest from the PSR Fund, it has assumed all risks with respect to the future payments by the Rehab Plan and MGA with respect to the GICs. Upon receipt of the purchase price for the Interest, the Fund Trustees were able to lift the freeze on the portion of the participant accounts invested in the GICs and they restored to each affected account its pro-rata share in the Total Recovery Amount. Pentair represents that it proceeded with the purchase of the Interest on June 13, 1997 in order that affected Plan participants residing outside Minnesota would not be required both to await future Rehab Plan and to accept a lesser recovery with respect to their frozen account balances. Pentair represents that its purchase of the Interest also enabled all affected participants, regardless of residency, to have immediate access to their account balances for purposes of making investment transfers, obtaining hardship withdrawals or plan loans, and receiving distributions of the portion of their account balances which had been frozen when they became entitled for distributions. Pentair represents that in the event the amount of future distributions from the GICs exceeds the purchase price paid to the Plan for the Interest, such excess amounts shall be transferred to the Plan and allocated pro rata among the accounts of the affected Plan participants.

8. In summary, the applicant represents that the transaction satisfies the criteria of section 408(a) of the Act because (a) the Sale was a one-time transaction for cash; (b) the purchase

[22] Book value represents total deposits under the GICs plus interest at the rates guaranteed under the GICs (the Contract Rates) through August 12, 1994, less previous withdrawals.

price paid by Pentair for the Interest enabled the Plan to have recovered the Total Recovery Amount, representing the sum of (i) the book value of the GICs as of the Seizure Date, (ii) Contract Rate interest thereon through the GICs' maturity dates, (iii) post-maturity interest at the rate of 5 percent through March 31, 1997; (c) the transaction enabled the PSR Fund to avoid any risk associated with the continuation of the Rehab Plan and enabled the participants to direct PSR Fund assets to other investments; and (d) the Plan did not incur any expenses or suffer any losses from the transaction.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Robert H. Herzog Profit Sharing Plan, (the Plan) Located in Santa Barbara, California

[Application No. D–10494]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) of a certain residential condominium (the Property) by the Plan [23] to Robert H. Herzog (Mr. Herzog), a disqualified person with respect to the Plan, provided that the following conditions are met:

(a) The Sale is a one-time transaction for cash;

(b) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(c) The Plan receives the fair market value of the Property at time of the Sale; and

(d) The Plan is not required to pay any commissions, costs or other expenses in connection with the Sale.

Summary of Factual Representations

1. The Plan is a profit sharing plan which was established by Mr. Herzog, the sole participant and beneficiary. As of August 1997, the Plan held assets valued at approximately $141,500. The trustee of the Plan is Mr. Herzog.

2. The Property is a residential condominium unit located at 362 Old Mammoth Road, Unit 62, Sherwin Villas in Mammoth Lakes, California. The Property consists of one bedroom, one-and-a-quarter baths and has a total living area of 704 square feet. The specific zoning classification and description of the Property is ''RF–2 Residential Multiple Family.''

3. According to the applicant, the Plan originally acquired the Property as a real estate investment. The Plan purchased the Property in October 1996 from an unrelated third party in a cash transaction for $40,271, including expenses. The applicant represents that the Plan has rented out the Property on a short-term basis to visitors of the Mammoth Lakes resort, and all income and expenses attributable to the Property are applied to the Plan. Since purchasing the Property, the Plan has spent approximately $9,723 on improvements but, because of rental income, has shown a net profit of approximately $945.

Mr. Herzog represents that the Property has not been leased to, or used by, any disqualified persons.

4. The applicant requests an exemption for the proposed sale of the Property by the Plan to Mr. Herzog. According to Mr. Herzog, he desires to sell the Property because it has failed to produce the desired rate of return and because it has become unwieldy investment from a management perspective. As noted above, the Plan would receive cash for the Property in an amount equal to the fair market value of such Property, as determined by a qualified, independent appraiser at the time of the Sale.

The applicant represents that the proposed transaction would be feasible in that it would be a one-time transaction for cash. Furthermore, the applicant states that the transaction would be in the best interests of the Plan because it would permit the Sale of the Property, enabling the Plan to invest the proceeds from the Sale in assets with a higher rate of return. Finally, the applicant asserts that the transaction will be protective of the rights of the participant and beneficiary as indicated by the fact that the Plan will receive the fair market value of the Property, as determined by a qualified, independent appraiser on the date of sale, and will incur no commissions, costs, or other expenses as a result of the Sale.

5. Cheryl L. Schafer (Ms. Schafer), an accredited appraiser with Mammoth Lakes Appraisal, located in Mammoth Lakes, California, appraised the Property on July 14, 1997. Ms. Schafer states that she is a full time qualified, independent appraiser, as demonstrated by her status as a Certified Residential Real Estate Appraiser licensed by the State of California. In addition, Ms. Schafer represents that both she and her firm are independent of Mr. Herzog. After inspecting the Property, Ms. Schafer determined that a fee simple interest in the Property is worth $50,000.

In her appraisal, Ms. Schafer relied primarily on the direct sales comparison approach. According to Ms. Schafer this method best represents the actions of buyers and sellers in the marketplace. This method of appraisal involves an analysis of similar recently sold properties in the area in question so as to derive the most probable sales price of the Property. Ms. Schafer's appraisal indicates that she compared the Property to six recently sold condominium units in the Mammoth Lakes area before reaching a conclusion as to the value of the Property.

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because: (a) The terms and conditions of the Sale would be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (b) the Sale would be a one-time cash transaction allowing the Plan to invest in assets with a higher rate of return; (c) the Plan would receive the fair market value of the Property, established by a qualified independent appraiser; and (d) the Plan would not be required to pay any commissions, costs or other expenses in connection with the Sale.

Notice to Interested Persons

Because Mr. Herzog is the only participant in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. James Scott Frazier, telephone (202) 219–8881. (This is not a toll-free number).

CoreStates GIC and BIC Fund (the Fund), Located in Philadelphia, Pennsylvania

[Application No. D–10522]

Proposed Exemption

The Department of Labor is considering granting an exemption

[23] Because Mr. Herzog is the only participant in the Plan, there is no jurisdiction under 29 CFR § 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) by the Fund of the Fund's remaining interest in two Guaranteed Investment Contracts (the GICs) of Confederation Life Insurance Company (CL) to CoreStates Bank, N.A. (the Bank), a party in interest with respect to the Fund; provided (1) the Sale was a one-time transaction for cash, (2) the Fund received no less than the fair market value of the GICs at the time of the Sale, (3) the Fund and its participants and beneficiaries did not incur any costs or expenses with respect to the Sale, and (4) any future distributions from the GICs that exceed the consideration paid to the Fund by the Bank in the Sale shall be paid to the Fund and allocated to the respective accounts of the affected employee benefit plans.

EFFECTIVE DATE: This exemption, if granted, will be effective as of December 31, 1997.

Summary of Facts and Representations

1. The Bank, which is the applicant, is a wholly-owned subsidiary of CoreStates Financial Corp., a bank holding company organized under federal and Pennsylvania laws and located in Philadelphia. The Bank is the successor to Hamilton Bank, which the Bank acquired in 1980. The Bank offers traditional commercial banking services to individuals and privately and publicly created entities located in the Middle Atlantic states.

Until 1993, Hamilton Bank served as trustee or investment custodian for approximately 250 employee benefit plans, and had investment discretion for either some or all of the assets of such plans (the Plans). Commencing in 1993, the Bank undertook such activities and duties for the Plans. The Plans include both defined benefit and defined contribution plans, such as profit sharing, money purchase pension, 401(k), and Keogh plans.

2. The Fund is a pooled fund sponsored and administered by the Bank in which the Plans invest portions of their assets. The investments made by the Fund are limited to guaranteed investment contracts issued by insurance companies and to bank investment contracts issued by banks. The applicant states that CoreStates Investment Advisers, Inc. (Advisers), a wholly-owned subsidiary of the Bank, is the investment adviser for the Fund and has investment discretion over the assets of the Fund. The applicant represents that with respect to each Plan that has invested in the Fund, the determination to invest Plan assets in the Fund is made by a fiduciary of the Plan independent of the Bank or by the participants of a Plan which provides for self-directed investment of individual participant accounts. As of September 30, 1997, the applicant represents that the fair market value of the assets of the Fund was approximately $5,638,341.

3. The Fund has invested a portion of its assets in the two GICs issued by CL, a Canadian insurance corporation doing business in the United States through branches in the states of Georgia and Michigan. The two GICs involved in the transaction for which the exemption is requested are described as follows:

	GIC No. 61977	GIC No. 62403
Date Purchased	Dec. 4, 1989	March 1, 1991.
Original Maturity Date	Dec. 3, 1994	April 30, 1996.
Amount Deposited	$500,000.00	$1,000,000.00.
Contract Rate of Interest	8.50 percent	8.20 percent.
8/12/94 Book Value [24]	$528,615.00	$1,036,045.00

[24] Book Value is the sum of the total principal deposits plus interest thereon at the rates guaranteed under the terms of the GICs, less previous withdrawals.

4. On August 11, 1994, the Canadian insurance regulatory authorities placed CL into liquidation and a winding-up process. On August 12, 1994, the insurance authorities of the state of Michigan commenced legal action to place the U.S. operations of CL into rehabilitation, which involved liquidating the assets of CL and establishing the methodology for determining and paying its contractual obligations. The applicant represents that a plan of rehabilitation (the Rehab Plan) has been approved by the rehabilitation authorities, and payments to CL contract holders, including the Fund, commenced under the Rehab Plan in April of 1997.

In addition to the amounts paid to the Fund by CL under the Rehab Plan, the GICs have also been afforded protection by the Pennsylvania Life and Health Insurance Guaranty Association (PLHIGA). Under the terms of the enabling statute of PLHIGA, the principal amount of the GICs was fully insured, and a substantial portion the interest due under the terms of the GICs was also insured by PLHIGA.[25]

5. The applicant states that In accordance with the Rehab Plan, substantial payments have been made by CL to the Fund with respect to the GICs. The applicant represents that in combination with the additional payments to the Fund by PLHIGA, the Fund already has recovered 100 percent of is principal investment in the GIC, plus substantial portions of the interest due under the GICs within the limits of PLHIGA's coverage. The applicant represents that CL has predicted that some additional amounts will be paid from various reserve funds over the next few years as the remaining assets of CL are liquidated.

The details of payments to the Fund are as follows:

	GIC No. 61977	GIC No. 62403
Paid 4/25/97 by CL	$458,773.70	$910,105.36
Paid 5/20/97 by CL	9,578.40	5,429.83

[25] The applicant represents that PLHIGA's coverage of interest on a GIC's principal (a) is limited to the four years prior to the rehabilitation date during which the GIC was in effect, (b) does not exceed 2 percentage points below the Moody Corporate Bond Average, and (c) for the period after the rehabilitation date up to the date of payment by PLHIGA, does not exceed 3 percentage points below the Moody Corporate Bond Yield Average.

	GIC No. 61977	GIC No. 62403
Paid 5/27/97 by CL	60,480.93	120,522.70
Paid 5/30/97 by PLHIGA	75,085.11	164,396.53
Paid 9/2/97 by CL	11.96	23.73
Total to date received	603,930.10	1,220,478.15
Projected future payments	3,714.00	8,347.00

6. In order to enable the Fund and its participating Plans to achieve a completed liquidation of the Fund's investment in the GICs and avoid additional accounting expenses related to monitoring and allocating future Rehab Plan payments, the Bank proposes to purchase the Fund's remaining interests in the GICs by acquiring the Fund's right to all future payments from CL pursuant to the Rehab Plan with respect to the GICs. The Bank is requesting an exemption for this purchase transaction under the terms and conditions described herein. As purchase price for all rights to future CL payments with respect to the GICs, the Bank proposes to pay the Fund cash in the amount of $12,061.00, which the applicant represents to be the amount of projected future payments on the GICs as calculated in accordance with the terms of the Rehab Plan. The Bank intends the cash sale transaction to take place December 31, 1997. The applicant represents that the Sale will enable the Plans invested in the Fund and their affected participants and beneficiaries to realize immediately the future Rehab Plan payments with respect to the GICs without awaiting the four years which is estimated for complete payment under the Rehab Plan. The applicant represents that the Fund and the Plans will not incur any costs or expenses with respect to the sale transaction. In the event the Bank should receive future payments on behalf of the GICs in excess of the purchase price of $12,061.00, such excess amounts shall be transferred to the Fund.

The applicant represents that the valuation methodologies used to determine the projected future payments on the GICs have been reviewed and accepted by the Michigan Insurance Commissioner, the Circuit Court of Ingham County, Michigan, the National Organization of Life and Health Guaranty Associations, and ACLIC, an organization of large financial institutions and plan sponsors that invested in CL GICs.

7. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because (a) the Sale will be a one-time transaction for cash; (b) the transaction will enable the Fund to avoid the additional administrative costs that will be experienced from retention of the Fund's remaining interests in the GICs; (c) no costs or expenses will be incurred by the Fund with respect to the Sale; (d) the plans participating in the Fund, and their participants and beneficiaries, will receive promptly all anticipated amounts owed by CL rather than over an anticipated next four years; and (e) any future distributions from the GICs that exceed the consideration paid to the Fund by the Bank in the Sale shall be paid to the Fund and allocated to the accounts of the Plans invested in the Fund at the time of the Sale.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Hawaii Laborers' Apprenticeship and Training Trust Fund (the Trust Fund)

[Application No. L–10485]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act shall not apply to the purchase of a certain parcel of unimproved real property (the Property) by the Trust Fund from the Laborers International Union of North America, Local 368, AFL–CIO (a/k/a the Hawaii Laborers Union), a party in interest with respect to the Plan, provided that the following conditions are met:

(a) The purchase of the Property by the Trust Fund is a one-time transaction for cash;

(b) The Trust Fund pays no more than the lesser of: (i) $1,570,000; or (ii) the fair market value of the Property as determined at the time of the transaction;

(c) The fair market value of the Property is established by an independent, qualified real estate appraiser that is unrelated to the Hawaii Laborers Union or any other party in interest with respect to the Trust Fund;

(d) The Trust Fund does not pay any commissions or other expenses with respect to the transaction;

(e) The Hawaiian Trust Company, Ltd. (Hawaiian Trust), acting as an independent, qualified fiduciary for the Trust Fund, determines that the proposed transaction is in the best interest of the Trust Fund and its participants and beneficiaries;

(f) Hawaiian Trust monitors various aspects of the purchase of the Property until closing, including the environmental reports concerning the Property, and takes whatever action is necessary to protect the interests of the Trust Fund; and

(g) The purchase price paid by the Trust Fund for the Property represents no more than 25 percent of the Trust Fund's total assets at the time of the transaction.

Summary of Facts and Representations

1. The Trust Fund is an apprenticeship training plan the assets of which are subject to the fiduciary responsibility provisions of Part 4 of Title I of the Act. The Trust Fund is also established and administered pursuant to the provisions of section 302 of the Labor Management Relations Act of 1947. Currently, there are approximately 2800 participants and beneficiaries covered by the Trust Fund. As of May 1997, the Trust Fund had total assets of $6,221,075.

2. The Property is a parcel of unimproved real property located at 96–150 Farrington Highway in Waiawa on the island of Oahu in the State of Hawaii. The Property is currently owned by the Hawaii Laborers' Union (the Union).

The Property is an irregularly shaped parcel with a gross land area of 3,981 acres or approximately 173,412 square feet. Approximately, 40,000 square feet of the Property is adjacent to the Waiawa Stream and is considered unusable for development. Thus, the usable portion of the Property represents approximately 133,412 square feet. The Property is undeveloped and partially overgrown with trees and shrubs along its perimeter. The interior portions of the Property are terraced, due to varying topography, with open yard areas.

The Property was recently re-zoned as an I–2 Intensive Industrial District. In this regard, the I–2 zoning designation is intended to set aside areas of Waiawa for a full range of industrial uses necessary to support the city. The applicant states that the current zoning designation will allow for the planned construction of a building to be used as a training school for participants in the Hawaii Laborers' Union apprenticeship and training plan (see Paragraph 3 below). The Property is located at the fringe of the Pearl City commercial area and is in close proximity to major freeways in Waiawa. Real estate appraisals of the Property state that an industrial complex which maximizes allowed density would represent the highest and best use of the site.

3. The applicant states that the Trust Fund's trustees (the Fund Trustees) would like to have the Trust Fund purchase the Property from the Union, a party in interest with respect to the Trust Fund. The proposed transaction would allow the Trust Fund to construct a building on the Property for use as a training facility for the Trust Fund's participants. At the present time, training classes are being held in temporary quarters—10 by 40 foot trailers—which limit the amount of students per class. The Fund Trustees believe that the Property is an ideal location for a training facility.

Current plans call for the construction of a three-story building (the Building), which will house six classrooms, a multi-purpose room, a kitchen, restrooms, and storage areas. In addition, a dormitory for neighboring island students and caretaker's quarters will be located on the second floor of the Building. The third floor of the Building will accommodate the administrative offices. The Building would be designed to meet the applicable zoning specifications.

The Building will provide a permanent facility for classrooms and ''hands-on'' training for laborer employment in various construction trades as well as housing accommodations for trainees from the neighboring islands. The Trust Fund currently lodges the trainees in hotels, which is fairly expensive for the Trust Fund.[26]

The applicant states that if the Trust Fund is unable to purchase the Property, it will have to consider other locations which are more expensive and possibly not as conducive to the activities for the proposed training facility. According to information supplied by independent real estate appraisers,[27] the cost of purchasing a similarly sized property suitable to the Trust Fund would be almost twice the cost of the proposed transaction. Thus, the applicant represents that if the Trust Fund is unable to proceed with the proposed transaction, and if no other affordable properties are available, the Trust Fund's existence may be in jeopardy.

4. The Property was appraised by James E. Hallstrom, Jr., MAI, SRA, of The Hallstrom Group, Inc. (Hallstrom), a real estate consultant and appraisal firm located in Honolulu, Hawaii. Hallstrom determined that the fair market value of the net usable area (*i.e.,* approximately 133,412 square feet) of the Property was approximately $1,570,000, as of January 31, 1997. Thus, based on Hallstrom's appraisal, the unusable portion of the Property does not add any value to the Property. The applicant states that in the proposed transaction the Trust Fund would not pay any additional amount to acquire this portion of the Property.

Hallstrom utilized a sales comparison methodology in valuing the Property. Hallstrom compared the Property with recent sales of four other industrial zoned properties, all within immediate and/or competitive market areas of the Property. In order to equate these four transactions with the Property, Hallstrom made adjustments for various comparative factors including appreciation/depreciation over time, location, zoning, frontage/access, off-site improvements, current easements and restrictions,[28] physical characteristics, and size. After making the necessary adjustments, Hallstrom concluded that the unencumbered fee simple interest in the Property would have a fair market value of approximately $11.75 per usable square foot, which would be rounded to a total of approximately $1,570,000. Hallstrom also concluded that an industrial complex, such as the Trust Fund's proposed training facility, would represent the highest and best use of the Property.

5. The Union has agreed to sell the Property to the Trust Fund for $1,570,000 in cash, subject to the review and approval of an independent fiduciary (see Paragraph 6 below). The parties will obtain an updated appraisal of the Property from Hallstrom at the time of the proposed transaction to ensure that the appraised amount (*i.e.,* $1,570,000) still reflects the fair market value of the Property at that time. The parties have agreed that the Trust Fund will pay the lesser of either: (i) $1,570,000, or (ii) the fair market value of the Property at the time of the transaction. In addition, the applicant states that the Trust Fund will not pay any commissions, transaction costs, or other expenses associated with the sale of the Property by the Union, other than the fees necessary for services of the Trust Fund's independent fiduciary, Hawaiian Trust. Thus, the Union will pay, among other things, the costs of the title search and title insurance premiums, the cost of recording the deeds conveying title to the Property to the Plan, all sales and transfer taxes (including the conveyance tax), the escrow fees, and the cost of Hallstrom's appraisal.

6. Hawaiian Trust has been appointed by the Fund Trustees to act as an independent fiduciary for the Trust Fund for purposes of the proposed transaction. Hawaiian Trust represents that it is a trust company organized under the laws of Hawaii and that it exercises fiduciary powers similar to those of national banks. Hawaiian Trust states that it is an experienced fiduciary in matters concerning employee benefit plans subject to the Act and is also experienced with real estate transactions and investments. Hawaiian Trust acknowledges its duties, responsibilities and liabilities in acting

[26] The Department is providing no opinion in this proposed exemption as to whether the current expenditures made by the Trust Fund for providing training, or whether future expenditures to be made by the Trust Fund for the construction of the Building and for the maintenance of the Building as a training facility, are or will be consistent with the fiduciary responsibilities contained in Part 4 of Title I of the Act. In this regard, the Department notes that section 404(a) of the Act requires, among other things, that plan fiduciaries act prudently and solely in the interest of the plan and its participants and beneficiaries when providing benefits to such participants and beneficiaries and defraying reasonable expenses of administering the plan.

[27] Other sites, as stated by The Hallstrom Group, Inc. (the Trust Fund's real estate appraiser for the Property as discussed in Paragraph 4 above) were valued at $40 per square foot, $37.85 per square foot, $24.73 per square foot, and $31 per square foot, whereas the Property was determined to be $11.75 per usable square foot. In addition, Art Balmaceda of Prudent Investors' Choice Realty Inc., an independent realtor in Honolulu, Hawaii, investigated two other properties for the Trust Fund. One property was 97,936 square feet (approximately 73 percent of the size of the Property) and valued at $2.5 million or $25.53 per square foot. The other property, which was approximately 7.52 acres and valued at $8.9 million, was too expensive for the Trust Fund.

[28] Hallstrom's appraisal notes that there is a 12-foot wide easement, in favor of the Hawaiian Electric Company, for power poles and overhead electrical wires. However, the Hawaiian Electric Company is currently negotiating with the Trust Fund to cancel the existing easement and relocate it so as not to interfere with the proposed Building.

as a fiduciary for the Trust Fund for purposes of the proposed transaction.

Hawaiian Trust represents that it is an independent fiduciary and not an affiliate of, or related to, the entities involved in the subject transaction. In this regard, Hawaiian Trust certifies that: (i) less than one (1) percent of its total deposits, or outstanding loans, are attributable to the deposits of, or loans to, the Union and its affiliates; and (ii) less than one (1) percent of its annual income (measured on the basis of the prior year's income) comes from business derived from the Union and its affiliates.

7. Hawaiian Trust has reviewed all of the terms and conditions of the proposed purchase of the Property by the Trust Fund. Hawaiian Trust's review and analysis included an on-site inspection of the Property as well as meetings with the appraiser, Hallstrom, and a thorough review of their most recent appraisal of the Property. Hawaiian Trust states that Hallstrom's appraisal has considered all of the factors necessary to accurately determine the fair market value of the Property, including its location vis-a-vis Waiawa Stream, the Hawaiian Electric Company's easement, the applicable zoning restrictions for industrial usage, the Property's accessibility to the Farrington Highway, and the offsite improvements surrounding the Property.

Based of this review and analysis, Hawaiian Trust concludes that the proposed transaction would be in the best interests of the Trust Fund and its participants and beneficiaries. In this regard, Hawaiian Trust states that the purchase of the Property would be a prudent transaction taking into consideration that the Trust Fund will be using this site as a training facility. Hawaiian Trust states that the agreed upon purchase price of $1,570,000, based on the Hallstrom appraisal, accurately reflects the current market value of the Property.

Hawaiian Trust states further that it will monitor the proposed purchase of the Property by the Trust Fund and will take whatever actions are necessary to protect the interests of the Trust Fund's participants and beneficiaries with regard to the transaction. To this end, Hawaiian Trust represents that it will ensure that the current appraisal of the Property is updated at the time of the transaction and that the Trust Fund pays no more than the fair market value of the Property. Hawaiian Trust will also ensure that the purchase price paid by the Trust Fund represents no more than 25 percent of the Trust Fund's total assets at the time of the transaction.

Hawaiian Trust represents that the Trust Fund will be able to meet all of its current expenses after the proposed transaction and that the transaction will not adversely affect the Trust Fund's liquidity needs. By letter dated August 22, 1997, Hawaiian Trust states that it has reviewed the Trust Fund's most recent financial information, including audited financial reports for the past six years, budget and financial statements for the last three full years, and the revised budget for the current plan year through July 31, 1997. In addition, Hawaiian Trust states that it spoke with the Trust Fund's Investment Manager, Brian H. Morikuni of T.M. Hogan, Inc., regarding the latest asset valuations and investment earnings. These valuations show that the proposed purchase price of $1.57 million should be less than 25 percent of the Trust Fund's total assets as of December 1997 (the projected time of closing).

Hawaiian Trust is responsible for ensuring that inspections of the Property are conducted by appropriate professionals prior to the transaction. These inspections will ensure that there are no hidden or unapparent surface or subsurface conditions on the Property—including soils, subsoils, geologic formulations, ground water or drainage conditions—that would adversely affect improvements and the value of the Property. Hawaiian Trust will review the latest soil analysis [29] and environmental assessment [30] (Phase I) reports for the Property, prior to the proposed transaction. In the event that there are significant environmental concerns regarding the Property (e.g. groundwater contamination exceeding State or Federal standards), Hawaiian Trust will not approve the proposed purchase of the Property by the Trust Fund. Hawaiian Trust will also verify the cancellation of the Hawaiian Electric Company's easement (see Footnote 2 herein) prior to the transaction. Finally, Hawaiian Trust represents that it will continue to review and monitor the proposed transaction until closing to ensure that the transaction is in the best interests of the participants and beneficiaries of the Trust Fund.

8. In summary, the applicant states that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The purchase of the Property by the Trust Fund will be a one-time transaction for cash; (b) the Trust Fund will pay no more than the lesser of either $1,570,000, or the fair market value of the Property as determined at the time of the transaction; (c) the fair market value of the Property will be established by an independent, qualified real estate appraiser; (d) the Trust Fund will not pay any commissions or other expenses with respect to the transaction, other than the services of an independent fiduciary (as described herein); (e) Hawaiian Trust, acting as the Trust Fund's independent fiduciary, has determined that the proposed transaction would be in the best interest of the Trust Fund and its participants and beneficiaries; (f) Hawaiian Trust will monitor the proposed transaction and will take whatever actions are necessary to protect the interests of the Trust Fund; and (g) the purchase price paid by the Trust Fund for the Property will represent no more than 25 percent of the Trust Fund's total assets at the time of the transaction.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section

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[29] C.W. Associates, Inc. d/b/a GeoLabs-Hawaii (GeoLabs), a geotechnical engineering firm in Honolulu, Hawaii, was hired to conduct a soil analysis of the Property. An October 14, 1997 letter from GeoLabs states that the Property will support the proposed Building utilizing spread footing foundations.

[30] M&E Pacific, Inc. (M&E), an independent, qualified environmental assessment firm located in Honolulu, Hawaii, has conducted a Phase I report, as of October 1997. The purpose of the Phase I report was to inventory the presence of potential on-site hazardous waste or hazardous substance contamination (e.g. hydrocarbons), and to detect potential noncompliance in relation to current and past activities conducted on or adjacent to the Property. According to the findings of M&E, there is no physical evidence of environmental concerns regarding the Property. However, two previous petroleum pipeline spills have been documented in the vicinity of the Property. Thus, M&E recommends further groundwater sampling on the southern boundary of the Property to determine the extent of any contamination.

In this regard, Hawaiian Trust will ensure that appropriate groundwater sampling tests are conducted prior to the transaction.

401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of November, 1997.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97–30826 Filed 11–21–97; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Records of Congress; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Records Services.

DATES: December 8, 1997, from 10 a.m. to 11:30 a.m.

ADDRESSES: United States Capitol Building, Room H130.

FOR FURTHER INFORMATION CONTACT: Michael L. Gillette, Director, Center for Legislative Archives, (202) 501–5350.

SUPPLEMENTARY INFORMATION:

Agenda

Update—Electronic Records Task Force

Report—Abraham Lincoln Commemoration

Report—Project 2000 Proposals

Update—Center for Legislative Archives

Other current issues and new business

The meeting is open to the public.

Dated: November 18, 1997.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 97–30797 Filed 11–21–97; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Advisory Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting.

SUMMARY: A meeting of the President's National Security Telecommunications Advisory Committee will be held on Thursday, December 11, 1997, from 9:30 a.m. to 11:30 a.m. The Business Session will be held at the Department of State, 2101 C Street NW., Washington, DC. The Executive Session will be held at the Old Executive Office Building, 16th and Pennsylvania Avenue NW., Washington, DC. The agenda is as follows:

—Call to Order/Welcoming Remarks
—Eligible Receiver
—NCS Manager's Report
—IES Report of Activities
—PCCIP Report
—Industry Executive Subcommittee (IES) Reports
  —Summary of Work Plan Accomplishments
  —IATF/IIG Infrastructure Assessments
  —Recommendations to the NSTAC Principals
—Adjournment

The meeting is classified at the SECRET level. Due to the sensitive nature of the issues listed above, the meeting will be closed to the public in the interest of national defense.

FOR FURTHER INFORMATION: Please contact Ms. Janet Jefferson (703) 607–6209 or write the Manager, National Communications System, 701 S. Court House Rd., Arlington, VA 22204–2198.

Dennis Bodson,

Chief, Technology and Standards.

[FR Doc. 97–30804 Filed 11–21–97; 8:45 am]

BILLING CODE 5000–03–M

NATIONAL CREDIT UNION ADMINISTRATION

Information Collection; Comment Request for Reinstatement

DATES: November 24, 1997.

The National Credit Union Administration (NCUA) intends to submit the following public information collection request to the Office of Management and Budget (OMB) for review and reinstatement under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. Public comments are encouraged and will be accepted until January 23, 1998.

Copies of the information collection request, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Betty May, (703–518–6414). Comments and/or suggestions regarding the information collection request should be directed to Mrs. May at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428; Fax No. 703–518–6433; e-mail address: bettym@ncua.gov within 60 days from the date of this publication in the **Federal Register**.

OMB Number: 3133–0015.

Form Number: 4000, 4001, 4008, 4012, 4015, 4016, 4401, 9500, 9600.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: Federal Credit Union Charter Application and Field of Membership Amendments.

Description: The Federal Credit Union Act sets forth the requirements for establishing a credit union based on a type of field of membership. The data collection is necessary to determine that the application for the charter/amendment is in compliance with the FCU Act. Respondents are credit union officials or applicants for credit union charters.

Respondents:

Estimated No. of Respondents/Recordkeepers: 5725.

Estimated Burden Hours Per Response: 3.6.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 20,303.